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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 436

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FANSTEEL METALLURGICAL CORPORATION

Vol. I

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938



IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6606

FANSTEEL METALLURGICAL CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Counsel for Petitioner:
MR. BENJAMIN V. BECKER,
MR. MAX SWIREN,
MR. DON M. PEEBLES,
MR. HAROLD M. KEELE,
MR. SIDNEY H. BLOCK,

Counsel for Respondent:
MR. CHARLES FAHY,

Petition for Review of order of the National Labor Relations Board.

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1 IN THE Filed Mar. 2[illegible] 1938.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit,

October Term, 1937.

6606.

Fansteel Metallurgical Corporation,
Petitioner,

vs.

National Labor Relations Board,
Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Mar. 24, 1938, Frederick G. Campbell, Clerk.

Benjamin V. Becker,
Max Swiren,
Don M. Peebles,
Harold M. Keele,
Sidney H. Block,
Counsel for Petitioner.

2 • • (Caption—6606) • •

To the Honorable,, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Fansteel Metallurgical Corporation, a New York corporation, respectfully petitions this Honorable Court for a review of a certain order entered on March 14, 1938, by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by it against this Petitioner, appearing and designated upon the records of the Board as "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235."

3 In support of this petition, your Petitioner respectfully shows:

Jurisdiction.

1. (a) Your Petitioner is, and at all times herein mentioned was, a corporation duly organized and existing under the laws of the State of New York and qualified to do business as a foreign corporation under the laws of the State of Illinois. Petitioner maintains, and at all times herein mentioned has maintained, its only plant and principal place of business and transacts and at all times herein mentioned has transacted its principal business in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(b) In the complaint issued and order entered by the Board in the aforementioned proceeding, it was alleged that your Petitioner engaged in unfair labor practices in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(c) By reason of the matters alleged in subdivisions (a) and (b) of this paragraph 1, this Court has jurisdiction of this petition by virtue of section 10(f) of the National Labor Relations Act.

Undisputed Facts.

2. The charges upon which the Board's complaint in the above proceeding was issued grew out of the so called "Sit Down Strike" during which two key buildings of the Petitioner's plant were seized by ninety-four (94) employees and

forcibly retained from February 17, 1937 to February 26, 1937. The occupancy of these two buildings effectively closed the entire plant. The Board found in its decision
4 that four hours following the seizure, the Petitioner's officers made a specific demand upon the men holding the plant for the return of possession, which was rejected by the men, and thereupon the Petitioner's representatives announced that all of the men occupying the buildings were discharged for their seizure and retention.

(a) The Board and the Petitioner stipulated before the Trial Examiner to the following facts: With eight or ten exceptions, the Petitioner did not, at the time of the discharge, know the identity, number or union affiliations, if any, of the men in occupancy of the buildings. The day following the seizure, the Circuit Court of Lake County, after hearing counsel for the Petitioner and Lodge 66, issued an Injunctional Order finding that the seizure of the buildings was illegal and that the men in occupancy thereof had been discharged for seizing and retaining the buildings, and directing that the men vacate the premises and return the possession to the Petitioner. Upon the refusal of the men to comply with the order, a writ of attachment was issued for their arrest. The Sheriff made two attempts to evict the men and encountered resistance with violence on both occasions. The first attempt was unsuccessful. The men were violently evicted by the Sheriff on his second effort. On both occasions, the discharged employees laid down a barrage of quart bottles of sulphuric acid, huge quantities of heavy steel and iron missiles, including pipes, bolts and tools directly at the Sheriff and his deputies. A number of the deputies were injured by the missiles and acid.

(b) The undisputed evidence showed that the unlawful occupancy of the buildings occasioned loss to the Petitioner approximating $60,000, consisting of physical damage to the buildings, equipment and inventory, and the loss of fixed charges and business during the period the men held possession of the building. Apart from the damage to the
5 buildings occasioned by their conversion into living quarters, and the rust and other injury to the machinery resulting from neglect, the deliberate physical destruction by the men in the occupancy of the buildings consisted of breaking of windows and frames and the destruction of tools, parts, sulphuric acid and other inventory and equipment.

(c) The undisputed evidence showed the following: After the damage to the buildings and equipment had been repaired, the Petitioner reopened its plant. Such of the men discharged for the plant seizure who filed applications for reemployment were rehired by the Petitioner without condition or limitation and without reference to their previous or future union activies, excepting only three who were not reemployed for reasons unconnected with any of the charges in the Board proceeding.* The remaining discharged employees did not apply for reemployment and, together with certain other employees in sympathy with them, engaged in what they termed a "strike." Upon the reopening of the plant, 61 members of Lodge 66, some of whom were officers and members of the bargaining committee and others of whom were outstandingly active in union affairs, resumed work at the plant.

(d) Lodge 66 and all persons named in the complaint issued by the Board, who participated in the sit down strike, were parties to the Injunction proceeding in the Circuit Court of Lake County, Illinois. After a full hearing, 37 sit down strikers were found guilty of contempt of court for refusing to vacate the Petitioner's plant and for resisting, with force, the law enforcing officers, and all were fined and sentenced to jail for varying terms from 10 days to 4 months. Thereafter, the Circuit Court of Lake County entered a final decree, without objection by counsel for the sit down strikers
6 and Lodge 66, finding that the seizure and withholding of the plant was unlawful, and the men occupying the plant, having refused to vacate the premises, had been properly discharged "for such unlawful and violent seizure." No appeal was taken from this final decree, and it now remains in full force and effect.

Pleadings.

3. Upon a charge filed by an organizer for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66 (herein called "Lodge 66"), the Board issued a complaint against the Petitioner on May 25, 1937, charging, in substance:

(a) That although, on September 10th and thereafter,

* The jobs of two applicants had been completely abolished and the third did not apply until six weeks after operations had been resumed and his position had been filled.

Lodge 66 was the exclusive bargaining representative of Petitioner's employees, Petitioner did, on September 10, 1936, September 21, 1936, February 17, 1937 and thereafter, fail and refuse to bargain collectively with Lodge 66 on behalf of its employees;

(b) That by various acts alleged in the complaint, Petitioner coerced and interfered with the employees' right to self-organization for collective bargaining purposes;

(c) That "while engaged in operations at the North Chicago plant," the Petitioner did, on February 17, 1937, discharge certain employees named in the complaint and did subsequently discharge two other employees, by reason of their union membership and concerted activities for the purpose of collective bargaining;

(d) That on February 27, 1937, Petitioner refused to reinstate to their regular positions of employment, all of the persons named as having been discharged on February
7 17th and certain others, by reason of their union membership and their concerted activities for the purpose of collective bargaining; and,

(e) That Petitioner caused to be organized a labor organization of its employees known as "Rare Metal Workers of America, Local No. 1," solicited members therefor, threatened employees with loss of employment for failure to join, and contributed financial and other support to the organization in violation of the National Labor Relations Act.

4. The Petitioner filed an answer which was in part amended during the hearing to conform to the proof. The answer, as amended, denied in substance the allegations of the complaint in their entirety, and further set out:

(a) That Petitioner did not, on February 17, 1937 or at any other time, discharge any of the persons named in the complaint by reason of membership in a union or by reason of concerted activities for collective bargaining; that such of the persons named in the complaint as engaged in the seizure and occupancy of Petitioner's buildings on February 17, 1937, were on that date, upon their refusal to vacate the premises, discharged for the seizure and retention of the plant and for no other reason;

(b) That no other employees were thereafter discharged excepting a foreman who had not been a member of the union and who was discharged for insubordination and inefficiency in addition to the fact that a reorganization was contem-

plated reducing his department and making the post of foreman unnecessary;

(c) That of the persons Petitioner was charged with improperly refusing to reinstate, most had either participated in the plant seizure and been discharged therefor or had aided and abetted in the illegal and violent retention of the plant, and accordingly the Petitioner was under no duty or obligation to offer reinstatement to such persons; that certain persons had been affirmatively offered reinstatement, which they had declined; and that Petitioner was not obligated to reinstate certain persons by reason of their inefficiency to perform the required duties;

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(d) That in addition to the foregoing matters, certain of the departments of the Petitioner's plant had been reorganized for efficiency purposes and as a result certain positions had been abolished, including positions formerly occupied by certain of the persons named in the complaint; that, accordingly, Petitioner was not obligated to reinstate such persons;

(e) That Lodge 66 was not on the dates in question the bona fide representative of a majority of its employees and entitled to bargain for them; and,

(f) That Petitioner did not, directly or indirectly, participate in the organization of the Rare Metal Workers of America, Local No. 1, and did not encourage membership therein or contribute to its support or, in any degree, dominate or interfere with the conduct of its affairs.

Hearing By Trial Examiner.

5. From June 7 to June 25, 1937, a hearing was conducted by a Trial Examiner designated by the Board. His Intermediate Report was filed with the Board on September 2, 1937, recommending a cease and desist order against the Petitioner and a requirement that Petitioner bargain with Lodge 66, withdraw recognition from Rare Metal Workers of America, Local No. 1, reinstate with back pay all but ten of the persons named in the complaint and place the remaining ten on a preferred list for reemployment. The Petitioner excepted to the Intermediate Report in its entirety and Lodge 66 excepted to the portion of the report dealing with the ten men recommended for a preferred list.

9

Order To Be Reviewed.

6. On March 14, 1938, the Board entered its decision and order. The order directed to the Petitioner, for a review of which this petition is filed, was as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fansteel Metallurgical Corporation, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Dominating or interfering with the formation or administration of Rare Metal Workers of America, Local #1, or any other labor organization of its employees, or contributing support to any such labor organizations;

(c) Refusing to bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North American, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees;

(b) Upon application, offer to those employees who went on strike on February 17, 1937, and thereafter, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since February 17, 1937;

(c) Make whole all employees who went on strike on February 17, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Withdraw all recognition from Rare Metal Workers of America, Local #1, as a representative of its employees for the purpose of dealing with the respondent concern-
11 ing grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Rare Metal Workers of America, Local #1, as such representative;

(e) Post immediately in conspicuous places in its plant at North Chicago, Illinois, and maintain for a period of at least thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid, and that recognition is withdrawn from the R. M. W. A. as ordered above;

(f) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act."

Principal Errors Relied Upon.

7. The above quoted order entered by the Board on March 14, 1938, in the above mentioned proceedings entitled "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235," and that portion of the decision, findings of fact and conclusions of law, upon the basis of which said order was entered (excepting only the provision of the order dismissing the charge that Petitioner engaged in unfair labor practices within the meaning of Sec-

tion 8(3) of the Act and the findings of fact and conclusions of law upon which such provision is based), are erroneous and contrary to law and should be set aside, for the following reasons, to wit:

12 (a) The Board's conclusions of law, upon which said order was based, are erroneous.

(b) So much of the Board's decision and findings of fact as form the basis for said order are not supported by, and are in fact contrary to, the evidence.

(c) The 60 persons named in the complaint who participated in the seizure and retention of Petitioner's plant were discharged on February 17, 1937, by reason of their unauthorized and unlawful seizure and retention of the buildings and for no other reason whatsoever. The Board found, in its decision, that the dismissal of these men did not constitute a "discriminatory discharge." These men, having been properly discharged, were no longer employees of the Petitioner, and the Board's order that these men be reemployed in their former positions by the Petitioner, upon their application, is inconsistent with the Board's own findings, unsupported by the evidence, contrary to law and should be set aside.

(d) The men who unlawfully seized two key buildings of Petitioner's plant on February 17, 1937, were enabled to retain possession thereof through the furnishing of food, bedding and other supplies by certain employees of the Petitioner and others who remained on the outside of the plant. The Board found that the persons aiding and abetting the illegal retention of possession of Petitioner's buildings during the so-called "sit-down" strike, who did not return to work upon the reopening of the plant, had voluntarily absented themselves from their employment and had never applied for reinstatement. Thirteen such employees were named in the complaint. The Petitioner was not, and is not, under any duty or obligation to offer to such employees so par-

13 ticipating in the illegal retention of Petitioner's plant reinstatement to their former positions. The Board's order that, upon application, the Petitioner grant reinstatement to such persons is unsupported by the evidence, is contrary to law and should be set aside.

(e) The persons named in the complaint were either discharged on February 17, 1937, for their illegal seizure and retention of Petitioner's plant or voluntarily absented them-

selves from the Petitioner's employment to engage in a so-called "strike." The Board properly found that Petitioner did not refuse reemployment to any of the persons named in the complaint, no application therefor having been made. Such strike began thirteen months prior to the entry of the aforementioned order by the Board and no showing was made, and there is no evidence in the record, that the strike, in connection with which the persons named in the complaint voluntarily ceased work, is, or constitutes, a "current labor dispute" as required by the National Labor Relations Act. The record shows that upon reopening of the plant the Petitioner replaced such of its former employees as failed to apply for reemployment with new employees and accordingly its plant was, at the time of the filing of the complaint herein, completely manned. The Board's order directing the Petitioner, upon application, to reemploy its former employees who had voluntarily ceased work, some of whom had thereafter been properly discharged, and who for thirteen months prior to the entry of the Board's order had voluntarily absented themselves from their employment is not supported by the evidence, is contrary to law and should be set aside.

(f) The evidence revealed that the Petitioner had itself performed certain maintenance and construction work
14 and the manufacture of certain dies needed in its operations, all of which work could be more economically obtained through the services of independent contractors especially equipped to perform the required services. Upon the reopening of the plant, the Petitioner, acting solely in the interest of more economical operations, completely abolished certain of the tool making and building and maintenance positions formerly occupied by certain of the persons named in the complaint. The functions of the positions so abolished have not, since the reopening of the plant by the Petitioner, been performed by any employees of the Petitioner. The Board's order directs that the Petitioner re-establish the positions abolished, re-employ, upon application, the persons formerly occupying such positions who went on strike February 17, 1937, and after such reemployment carry out the economy reforms previously undertaken. Such order and the failure to pass directly upon the Petitioner's contention that it is under no duty to offer reemployment to persons whose positions have been abolished in the interest of efficiency and whose functions are no longer being performed by any employee of the Petitioner, would defeat the purposes of the

National Labor Relations Act by engendering industrial strife and unrest and thereby burdening or obstructing interstate commerce; the order is unsupported by the evidence, is contrary to law and should be set aside.

(g) The Petitioner's amended answer averred, and the evidence showed, that certain of the persons named in the complaint had not, prior to the closing of the plant, conducted their work with satisfactory efficiency and that accordingly the Petitioner was under no duty to offer, either upon application or otherwise, reinstatement to such persons.

The evidence further showed that the persons in this
15 category had not actively or otherwise participated in the so-called "sit-down" strike or in any union activity, and membership which any of them may have had in Lodge 66 was unknown to the Petitioner. The Board's order directs that the Petitioner upon application, reinstate all such persons and after such reinstatement discharge them if their rate of efficiency be not satisfactory. Such order and the failure to pass directly upon the Petitioner's contention that it is under no duty to offer reemployment to such inefficient persons would defeat the purposes of the National Labor Relations Act by engendering industrial strife and unrest and burdening or obstructing interstate commerce; the order is unsupported by the evidence, is contrary to law and should be set aside.

(h) Lodge 66 was not on March 3, 1937 or March 5, 1937, or at any time thereafter, the bona fide representative of a majority of the employees of the Petitioner within the unit found by the Board in its decision to be appropriate for the purposes of collective bargaining. The order of the Board directing the Petitioner to cease and desist from refusing to bargain collectively with Lodge 66 as the exclusive representative of its hourly employees, and upon request to bargain collectively with said union, is not supported by the evidence, is contrary to law and should be set aside.

(i) The finding that Petitioner engaged in unfair labor practices prior to February 17, 1937, by interfering with, restraining and coercing its employees in the exercise by the employees in their right to self-organization is unsupported by the evidence. Accordingly, the order of the Board that the Petitioner cease and desist from interfering with, restraining or coercing its employees in their rights to
16 self-organization, as guaranteed in Section 7 of the National Labor Relations Act, is contrary to law and should be set aside.

(j) Rare Metal Workers of America, Local No. 1, is a labor organization formed by the employees of the Petitioner in April, 1937. The evidence shows that no member of Petitioner's management aided, encouraged, or in any respect participated in the organization of the union or solicitation of membership or the conduct and management of its affairs, and that no pressure or coercion of any kind was exerted upon any employees to induce them to join or refrain from joining the union. The Board's order that the Petitioner cease and desist from dominating or interfering with the formation or administration of Rare Metal Workers of America, Local No. 1, or any other labor organization of its employees, or contributing support thereto, and the Board's order that the Petitioner withdraw all recognition from Rare Metal Workers of America, Local No. 1, as to representation of its employees for the purpose of collective bargaining, are not supported by the evidence, are contrary to law and should be set aside.

Order Exceeds Board's Statutory Authority and Contravenes Federal Constitution.

8. The Board's order, in the respect set out in this paragraph 8, exceeds the authority conferred upon the Board by the National Labor Relations Act. The statute limits affirmative action to such orders as "will effectuate the policies of this Act." If construed to authorize the instant order, the National Labor Relations Act would contravene the provisions of the Constitution of the United States guaranteeing due process of law.

(a) The so-called "sit-down" strike, involving the seizure and retention of an employer's property by em-
17 ployees, is illegal, whether undertaken to enforce alleged rights under the National Labor Relations Act or otherwise. Neither the National Labor Relations Act nor any other law deprives an employer of the right to discharge employees who participate in such illegal plant seizure. The Petitioner discharged all of the employees who seized and refused to surrender Petitioner's plant, and, after such proper discharge, persons occupying the plant were no longer employees within the meaning of that term under the National Labor Relations Act. The Board was without authority in law to order reemployment by the Petitioner of the men who had been so discharged for good cause.

(b) The sit-down strikers (1) forcibly retained possession of Petitioner's plant for ten days in open defiance of the Circuit Court injunction, (2) on two separate occasions resisted, with violence, the Sheriff's efforts to enforce the injunctional order, and on both occasions hurled heavy bolts, tools, iron missiles and quart jars of sulphuric acid at the Sheriff and his deputies, injuring several of them, and (3) in resisting the law officers, deliberately broke windows, injured the building and destroyed tools and inventory. Thirty-seven sit-down strikers were convicted of contempt and received fines and jail sentences varying from ten days to four months. In ordering the reinstatement of these sit-down strikers, the Board says:

"We have, in some cases, declined to order reinstatement of striking employees despite the fact that the strike was caused by the employer's unfair labor practices. In one such case, the striker in question had been indicted for shooting and wounding a fellow employee during the course of the strike. In another, six strikers had pleaded guilty to a felony involving conspiracy to destroy property, and
18 two had pleaded guilty to the felony of stealing dynamite and converting it to their own use; all eight had been sentenced to a maximum of ten years in jail. It cannot be said that the conduct of the strikers in the present case is analogous to the conduct in these instances. They were not engaged in sabotage."

The Board's order of reinstatement apparently rests upon the failure of the sit-down strikers to inflict fatal injuries and receive long term sentences. The National Labor Relations Act does not and could not constitutionally deprive Petitioner of its right to refuse employment to men engaged in the destruction of property and deadly violence whether or not these men were indicted for, or convicted of, felonies.

(c) The jobs formerly occupied by certain of the persons named in the complaint were abolished upon the reopening of Petitioner's plant. The undisputed evidence shows that such internal reorganization was effected solely for economical and competitive reasons and in no way related to union membership or activity of any of Petitioner's employees. In ordering that Petitioner reestablish the abolished positions, reemploy the persons who had formerly occupied them and then carry out a new internal reorganization, the Board has exceeded its authority under the National Labor Relations Act.

(d) The record shows that after the discharge, on February 17, 1937, of the employees who seized and withheld the Petitioner's plant, Lodge 66 did not represent a majority of Petitioner's employees. The Board's order nevertheless requires that Petitioner now recognize Lodge 66 as the exclusive bargaining representative for all of its employees.

The Board's decision indicates that this portion of the
19 order is imposed upon the Petitioner as a penalty for failing to recognize Lodge 66 as sole bargaining representative in February, 1937. The Board is without authority in law either to impose a penalty or to designate a bargaining representative contrary to the desires of Petitioner's employees.

9. The Board's order requires that Petitioner (a) reemploy persons who had been discharged for their violent and illegal seizure and retention of Petitioner's plant and who thereafter, by their illegal conduct and violent resistance to the law enforcement officers, destroyed Petitioner's property and otherwise damaged Petitioner in an approximate amount of Sixty Thousand Dollars ($60,000.00), and (b) reinstate employees who aided and abetted in the illegal retention of Petitioner's plant and in the resultant destruction of property and other damage to the Petitioner in the approximate amount of Sixty Thousand Dollars ($60,000.00). No restitution for such damage has been offered by the employees and discharged employees occasioning the same, and none has been required by the Board as a condition of reemployment and reinstatement. By reason of the foregoing, the Board's order constitutes a deprivation of Petitioner's property in violation of the provisions of the Constitution of the United States guaranteeing due process of law and accordingly is contrary to law, null and void and should be set aside.

Denial of Due Process in Hearing by Board.

10. In its conduct of the proceedings above described resulting in the entry of the aforementioned order, the Board denied to the Petitioner its constitutional right to due precess of law in the following respects, to wit:

(a) By the refusal of the Board and the Trial Examiner to grant Petitioner's application for subpoenas and sub-
20 poenas duces tecum, the Petitioner was hampered and unduly prejudiced in the presentation of evidence and was prevented from adducing and presenting evidence in accord-

ance with the National Labor Relations Act and the constitutional guarantee of due process of law. Petitioner's application, which complied with the regulations of the Board and was filed together with the answer, sought (1) subpoenas for the persons named in the complaint as having been discharged and refused reemployment by the Petitioner by reason of union membership and union activity, (2) a subpoena for a conciliator of the United States Department of Labor having information respecting violence and threatened violence by certain of the persons named in the complaint, and (3) subpoenas duces tecum directed to Lodge 66 for the production at the hearing of its minute books, books of account, check books, membership cards, books and lists, and correspondence relating to the solicitation of members among the Petitioner's employees and relating to the participation of Lodge 66 or its officers and members in the seizure and retention of Petitioner's plant. The application showed that the last named documents were sought to establish the number and status of the membership of Lodge 66 from September 10, 1936 to the date of the hearing, the use by Lodge 66 of violence and other illegal duress to compel employees of the Petitioner to accept membership therein, and the participation of Lodge 66 in the conspiracy to seize and retain Petitioner's plant and otherwise to engage in violence. After the hearing had been in progress more than a week, the Board entered an order denying in its entirety Petitioner's application for subpoenas. During the hearing, witnesses for the Board testified orally on matters contained in the written records which Petitioner sought to have produced by the subpoenas duces tecum it requested. The Petitioner there-
21 upon requested, without avail, that subpoenas be issued forthwith for use in cross-examining such witnesses and in contradicting their testimony. By the repeated refusal of the Board and Trial Examiner to issue subpoenas, Petitioner was deprived of an opportunity for a full and fair hearing as guaranted by the National Labor Relations Act and the due process provisions of the Constitution of the United States.

(b) During the hearing before the Trial Examiner, the attorney for the Board had in his possession numerous subpoenas signed in blank by the Board which such attorney was enabled to, and did, use, without application to the Board and without limitation, to obtain witnesses and evidence in

support of the Board's complaint. The hearing lasted eighteen days, and several hours after it had been entirely closed, the Trial Examiner on his own motion, reopened the hearings, advising Petitioner that the Board had authorized its trial attorney to fill in one of the blank subpoenas in his possession for a limited portion of the membership records of Lodge 66 sought by the application, and a subpoena directed to the aforementioned conciliator of the Department of Labor who was admittedly not then available for service. Such belated and limited action did not and could not cure the prejudice caused to the Petitioner because (1) the hearing had terminated and the numerous witnesses who testified as to the contents of the records were not available for cross-examination, and (2) the extent of the subpoena so granted to the Petitioner after the termination of the hearing was so limited in scope as to be wholly insufficient to meet the purposes of the Petitioner in seeking the issuance of the same.

(c) Throughout the proceeding the Board exhibited hostility and prejudice against the Petitioner and unmistakable partisanship in favor of Lodge 66. Notwithstanding that
22 the same parties, the same counsel and the same witnesses were engaged in trial before the Circuit Court of Lake County on contempt proceedings, the Board and the Trial Examiner denied Petitioner's motion to adjourn the hearing until the completion of the court trial. Only the intervention of an injunction restraining interference with the judicial proceeding saved the Petitioner from the necessity of going forward in two separate proceedings on substantially the same subject matter at the same time.

(d) Witnesses for the Board were permitted to testify from memory as to the contents of records in their possession, for which subpoenas had been refused by the Board, and the Trial Examiner encouraged such witnesses to refuse voluntarily to produce such records. Throughout the hearing he sought to limit and minimize the testimony respecting violence and other illegal acts attendant upon the sit-down strike. While limiting the cross-examination by the Petitioner to the subject matter of the direct examination, the Trial Examiner extended to the Board wide and unlimited scope upon cross-examination.

Order is Ambiguous and Contrary to Purposes of National Labor Relations Act.

11. By its ambiguity and its failure to pass upon and give effect to (a) the complete abolition of certain jobs in the Petitioner's plant, (b) the substantial modification in pay rates and other conditions relating to certain other jobs in Petitioner's plant, and (c) the drastic curtailment in number of employees resulting from the current business depression, the Board's order would, if enforced, defeat the purposes of the National Labor Relations Act by engendering indus-
23 trial strife and unrest, require additional and further proceedings before the Board on matters now in evidence in this record, and otherwise burden and obstruct interstate commerce.

Wherefore, Fansteel Metallurgical Corporation petitions this Honorable Court for a review of the aforementioned order entered by the Board on March 14, 1937, in proceedings entitled "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. C-235," and your Petitioner respectfully prays:

(1) That the Board be directed to certify and deliver to your Petitioner a transcript of the entire record in the aforementioned proceeding before the Board;

(2) That the Petitioner may be granted leave to file such certified record in the proceedings before the Board within a reasonable time to be fixed by this Honorable Court; and

(3) That the aforesaid order of the Board be set aside and held for naught and that your Petitioner, its officers, agents and representatives, be relieved by order of this Honorable Court from the necessity of complying therewith.

And your Petitioner will ever pray.

Fansteel Metallurgical Corporation,
By R. J. Aitchison,
President.

Benjamin V. Becker,
Max Swiren,
Don M. Peebles,
Harold M. Keele,
Sidney H. Block,
Counsel for Petitioner.

State of Illinois, } ss.
County of Cook. }

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation the Petitioner in the above and foregoing petition, and makes this affidavit on its behalf; that he has read the foregoing petition by him subscribed and has knowledge of the contents thereof and that the statements of fact made in the above and foregoing petition are true to the best of his knowledge and belief.

R. J. Aitchison.

Sworn to and subscribed before me this 24th day of March, A. D. 1938.

Varian M. Bates,
Notary Public in and for the County and State Aforesaid.

(Seal)

Filed Apr. 4, 1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—6606) • •

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW, AND REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board (hereinafter referred to as the Board) by J. Warren Madden, Chairman, and Edwin S. Smith, Member, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. A. Sec. 151, et seq.) files this answer and request for the enforcement of an order of the National Labor Relations Board:

(1) The Board admits each and every allegation contained in paragraphs "1" and "6" of the petition to review.

(2) With respect to the allegations contained in paragraphs "2", "3", "4", and "5" of the petition to review, the Board for a full and exact statement of the provisions of the charges, complaint, notices of hearing, answer, amended answer, stipulations, intermediate report, petitioner's excep-

tions to said report, and decision of the Board including its findings of fact, conclusions of law, order, and other proceedings had in said matter before the Board, prays reference to certified copies thereof contained in the transcript of the entire record of the proceedings.

(3) The Board denies each and every allegation con-
26 tained in paragraphs "7", "8", "9", "10", and "11" of the petition to review.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays this Honorable Court that the said petition, insofar as it prays that the Boards order be set aside, be denied.

(4) Further answering, the National Labor Relations Board, pursuant to Section 10(f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board in the proceeding instituted against petitioner, Fansteel Metallurgical Corporation, which proceeding is designated on the records of the Board as Case No. C-235, the title thereof being "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66."

In support of its request for the enforcement of said order the Board alleges:

(a) Petitioner is and at all times herein mentioned was a corporation organized and existing by virtue of the laws of the State of New York. Petitioner maintains, and at all times herein mentioned has maintained, its only plant and principal place of business and transacts and at all times herein mentioned has transacted, its principal business in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(b) The unfair labor practices which the Board found the petitioner had been and was then engaged in occurred in the City of North Chicago, County of Lake, State of Illinois, within this circuit.

(c) By reason of the matters alleged in subparagraphs (a) and (b) of paragraph 4 hereof, this Court has jurisdiction of the petition herein and of this request for enforcement, by virtue of Section 10(f) of the National Labor Relations Act.

(d) On May 25, 1937, charges and amended charges hav-
ing been duly filed with the Board by Amalgamated As-
27 sociation of Iron, Steel and Tin Workers of North America, Lodge 66, the Board by its Regional Director for the

Thirteenth Region issued its complaint in said proceeding, alleging that the petitioner had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which complaint, together with a notice of hearing therein, was duly served upon petitioner. Said hearing was noticed for June 7, 1937. Thereafter, on June 2, 1937, the petitioner filed its answer to said complaint.

(e) Thereafter, on June 3, 1937, the Board made an order designating Tilford E. Dudley as Trial Examiner in said proceedings.

(f) Thereafter, from June 7 to June 25, 1937, a hearing was held before said Trial Examiner in Waukegan, Illinois. Full opportunity to be heard, to examine, and cross-examine witnesses and to adduce evidence bearing upon the issues was afforded all parties.

(g) Thereafter, on September 2, 1937, the Trial Examiner filed an intermediate report containing his findings and recommendations. Thereafter, on September 17, 1937, petitioner filed exceptions to said intermediate report and on September 20, 1937, the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, filed exceptions to certain parts of said intermediate report.

(h) Thereafter, on March 14, 1938, the Board being sufficiently advised in the premises and having duly considered the matter, and being of the opinion upon all the testimony and evidence that petitioner had been and was then engaged in certain unfair labor practices affecting commerce within the meaning of the Act, modified and affirmed as so modified, the rulings of the Trial Examiner and duly stated its findings of fact and conclusions, and entered the following order directed to petitioner, its officers, agents, successors, and assigns:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fansteel Metallurgical Corporation, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-

organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Dominating or interfering with the formation or administration of Rare Metal Workers of America, Local #1, or any other labor organization of its employees, or contributing support to any such labor organizations;

(c) Refusing to bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees;

(b) Upon application, offer to those employees who went on strike on February 17, 1937, and thereafter, immediate and full reinstatement of their former positions, without prejudice to their senority or other rights or privileges, dismissing, if necessary, all persons hired since February 17, 1937;

(c) Make whole all employees who went on strike on February 17, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Withdraw all recognition from Rare Metal Workers of America, Local #1, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Rare Metal Workers of America, Local #1, as such representative;

(e) Post immediately in conspicuous places in its plant at North Chicago, Illinois, and maintain for a period of at least

thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid, and that recognition is withdrawn from the R. M. W. A. as ordered above;

(f) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8(3) of the Act.

29 Thereafter, on March 14, 1938, said order was served upon petitioner by sending a copy thereof postpaid, bearing government frank, by registered mail to Max Swiren, petitioner's attorney, at One North La Salle Street, Chicago, Illinois.

(i) Said order is and at all times since its issuance has been in full force and effect.

Wherefore, the Board prays this Honorable Court that it deny the petition to set aside the Board's order, and that it grant the request made herein for enforcement of said order; and pursuant to Section 10(f) of the National Labor Relations Act is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony, and evidence, findings of fact and conclusions of law, and order of the Board. The Board further prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and transcript to be served upon petitioner, and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings therein, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon, a decree denying in whole the petition to set aside and enforcing in whole the said order of the Board and requiring petitioner, its officers, agents, successors, and assigns, to comply therewith.

J. Warren Madden,
Chairman.

Edwin S. Smith,
Member National Labor Relations Board.

Dated at Washington, D. C. this 2nd day of April, 1938.

Charles Fahy,
General Counsel.

30 District of Columbia. } ss.

J. Warren Madden and Edwin S. Smith, being first duly sworn, state that they are Chairman and Member, respectively, of the National Labor Relations Board; that they have read the foregoing answer and request for enforcement subscribed by them and have knowledge of the contents thereof; and they further on oath state that the statements made in the foregoing answer and request for enforcement are true to the best of their knowledge and belief.

J. Warren Madden.
Edwin S. Smith.

Sworn and subscribed before me this 2nd day of April, 1938.

John E. Lawyer,
(Seal) *Notary Public, District of Columbia.*

My commission expires September 8, 1939.

30½ (Endorsed) U. S. C. C. A.—7 Filed Apr 4 1938 Frederick G. Campbell Clerk.

123 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

CHARGE.

(Board Exhibit 1-I.)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Fansteel Metallurgical Company, 1009, 22nd Street, North Chicago, Illinois, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that

The said Company, through its officers and agents, did, on the 10th day of September, 1936, refuse to bargain collectively with the properly chosen representatives of its employees, a labor organization known as Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 66, and in that the Company has since that date refused, and still does refuse, to bargain collectively with the said labor organization.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,
Organizer for Amelgamated Association of Iron, Steel and Tin Workers of America, Local 66; in the Fansteel Metallurgical Company Plant.
Address of Organizer:
Clayton Hotel,
Waukegan, Illinois.

Subscribed and sworn to before me this fifteenth day of September, 1936, at Chicago, Illinois.

Anna M. Naun
Notary Public.

(Seal)

46 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

Thirteenth Region.

In the Matter of Fansteel Mettallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66.	Case No. XIII-C-80.

COMPLAINT.

Board Exhibit No. 1A.

It having been charged by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, of North Chicago, Illinois, that the Fansteel Metallurgical Corporation, 1009 Twenty Second Street, North Chicago, Illinois, hereinafter called the respondent, at its plant in North Chicago, Illinois has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth

and defined in the National Labor Relations Act approved July 5, 1935, the National Labor Relations Board hereby alleges the following:

1. The respondent is and has been continuously since March 13, 1917 a corporation organized and existing under the laws of the State of New York; respondent maintains an office at 120 Broadway, New York, N. Y., and has and maintains its executive offices and plant at North Chicago, Illinois; respondent owns or controls the following subsidiary corporations: Tantalum Corporation of America, Ramet Corporation of America, Vascoloy-Ramet Corporation, and Fansteel Mining Corporation; the respondent and its subsidiaries at respondent's plant at North Chicago, Illinois are now and during the last five years have been engaged in the devel-
47 opment, refinement, manufacture, sale and distribution of non-ferrous rare metals, including tantalum, columbium, tungsten, molybdenum, caesium and rubidum and products thereof. The business engaged in includes (a) the extraction of such rare metals from their ores or commercial intermediate products by chemical, metallurgical and electro-metallurgical processes, many of which are patented or secret; (b) the manufacture of rare metals into useful, commercial form; (c) the manufacture of chemical compounds of the metals; (d) the manufacture of alloys into which the rare metals are incorporated; and (e) the fabrication of apparatus, equipment or parts made in whole or in part from such rare metals or their alloys. Among the fabricated products manufactured from such rare metals by the respondent are contact points for ignition systems, varied tantalum parts for chemical and rayon industries, molybdenum and special alloy wire for use in vacuum tubes, radios and commercial radio tubes, battery chargers and rectifiers. Through its subsidiary. Vascoloy-Ramet Corporation, the respondent manufactures machine cutting tools and drawing dies and manufactures "Vascoloy-Ramet", a hard cutting carbide for use in such tools. Sales of this subsidiary are now made through Vanadium Alloys Steel Company. A large research laboratory is maintained for the further development of both the processes and products of the respondent and the extension of their uses. The respondent conducts its own sales organization, except in certain foreign countries where it operates through exclusive sales agents, and except the sale of products of the Vascoloy-Ramet Corporation above referred to.

2. The respondent, in the course and conduct of its busi-

ness and in the operation of its Plant at North Chicago, Illinois, causes and has continuously caused large quantities of material consisting of ores, chemicals, acids, non-ferrous metals of various kinds and in various forms, and various other raw materials used in its processes and development, refinement and manufacture of tantalum, columbium, tungsten, molybdenum, caesium and rubidum and products thereof, to be purchased and transported in interstate and foreign commerce from and through states of the United States other than Illinois and from foreign countries to the North Chicago Plant in the State of Illinois, and causes and has continuously caused large quantities of the finished products manufactured and produced by it to be sold, transported and distributed in interstate and foreign commerce from the North Chicago Plant in the State of Illinois into and through states of the United States other than the State of Illinois and into foreign countries.

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3. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, hereinafter called the union, is a labor organization as defined in Section 2, Subdivision 5 of the National Labor Relations Act.

4. A unit for the purpose of collective bargaining composed of the production and maintenance workers employed by the respondent at its North Chicago Plant except supervisory, clerical and laboratory employees, would insure to employees the full benefit of their right to self-organization and would otherwise effectuate the policies of the National Labor Relations Act, and is a unit appropriate for the purposes of collective bargaining.

5. Prior to September 10, 1936 and thereafter, a majority of the employees in the said unit had designated the union as its representative for the purposes of collective bargaining with respondent. By virtue of Section 9 (a) of said Act, the union was and has been since said date, the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

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6. On or about September 10, 1936, September 21, 1936 and February 17, 1937 and at all times thereafter, while engaged in operations at the North Chicago Plant above described, the respondent has refused and failed and does now refuse and fail to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with said union as the exclusive representative

of all employees in the aforementioned unit, in that the respondent has refused and failed and does now refuse and fail to meet, bargain and negotiate with the representatives duly designated for that purpose by the said union; by such acts and each of them respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (5) of said Act.

7. On or about August 17, 1936 the respondent, while engaged in operations as above described entered into a contract in writing with the National Metal Trades Association, whose policies are that of the open shop, to accept and did accept into their employment one Alfred Johnstone, an employee, operative and agent of the National Metal Trades Association, for the purpose of espionage, intimidation, interference, spying and reporting upon, and keeping under surveillance and reporting upon, the activities and membership of said union; respondent did retain in its employ and avail itself of the services of said Johnstone for the duties and purposes above-mentioned until December 1, 1936; during the time said Johnstone was in the service of respondent he became a member of the union, took an active part in the work of the union and from time to time reported thereon to the National Metal Trades Association who in turn reported to respondent; on or about September 8, 1936 the respondent employed one A. J. Anslem as Superintendent of the North Chicago Plant for, among other things, the purpose of breaking up the union; between the dates of November 11, 1936 and February 1, 1937 respondent transferred John Kondrath, a machinist and President of the union, from the Machine Shop to the office of respondent in which office there was a drill press and a lathe, and ordered and required him to work there from 8 A. M. until 4 P. M., with one hour for lunch, but forbade him to enter the Plant or yard to talk with or associate with any of respondent's employees; on or about February 27, 1937 and thereafter down to and including the time of the filing of this complaint, the respondent has sent, caused to be sent or acquiesced in the sending of fellow workers and others to the homes of its striking workers and offered to reinstate them to their positions of employment as individuals upon the abandonment by the employees of their rights guaranteed in Section 7 of the Act; all of such acts and each of them did and does have the purpose, intent and effect of intimidating, coercing, restraining and interfering with the lawful exercise of the rights of respondent's employees

guaranteed in Section 7 of the Act; the respondent by such acts and each of them engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of the Act.

8. On February 17, 1937 while engaged in operations at the North Chicago Plant as described above, respondent, acting by and through its officers and agents, caused to be discharged the following employees:

Andrew Rode, Edward Kaucic, Lester Crump, Charles Warner, John Kondrath, Thomas E. Fagan, John Starovich, Harold Dreyer, Raymond DuBois, Angelo Galbavy, William D. Magness, Al Bunton, Joseph Petraitis, Edward Schuman, Fred Hensley, Anton Nagode, John Praski, Luther Small, Edward Brunke, Stanley Grum, Jerome Camernick, Jr., Clarence Dreyer, Carl A. Swanson, Fred Yaeger, Art Holm, Jr., Joseph Aigner, Frank Moxey, Harry H. Rayner, Phil Graimer, Robert Pratt, Jasper Leskovec, Frank Museck, Ed. Ruck, Mike Zelenick, John Grom, Andy M. Anderson, Oscar Johnson, Nick Bankowisch, Frank Latz, Steeve Ark, Paul Wells, Joan Bissonnette, Virginia Butterfield, Isabelle Recktenwald, Vivian Johnson, John Kudith, Victor Hertel, Elmer Luke, John W. Jackoway, Elsworth Peters, Charles E. Fulkerson, Charles E. Fulkerson, Jr., Fern Gartley, Bartol Prutovey, Eric Lindberg, George Kallio, Nate Mogel, Victor Weatherhead, Jack Taylor, Bessie Luczo, Tillie Mesec, Alan White, Frank Zelenick, Ted Christianson, Roy Brown, Leo P. Daluga, Merritt Pratt, Peter Skarbalus, Gus. Canclakes, Joseph Chudy, George W. Smith, Arno Romppaine, Orville Romppaine, Joseph Richveis, Marguerite Siefert, Evelyn Gramer, Frances Fellens, Joseph Hoff, Theodore Ohlson, Tony Kancilja, David Nostell, Steve Luczo, Eugene D. Hendee, Vincent Ditmeyer, George Mondro, Otto Latz, Frank Furlan, Joe Lima, Herman Latz, Sonny Shure and Paul Makoval;

51 and each of them, for the reason of their membership in the union and that they engaged in concerted activities for the purpose of collective bargaining and for other mutual aid and protection.

9. On February 18, 1936 the respondent while a strike hereinafter referred to was in progress, discharged and thereafter refused to reinstate W. D. Crump, one of its employees, by reason of his membership in the union; on February 25, 1937 the respondent while a strike hereinafter referred to was in progress, discharged and thereafter refused to reinstate Art

Holm, Sr. for the reason that respondent suspected he was a member of the union and that he had engaged in concerted activities with other employees for his and their mutual aid and protection.

10. By the discharge of the above individuals and each of them named in paragraphs 9 and 10, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the above named individuals, and each of them, and did discourage membership in the union and did thereby engage in unfair labor practices within the meaning of Section 8, Subdivision (3) of the Act.

11. On or about February 27, 1937 and thereafter the respondent, while engaged in operations at the North Chicago Plant, through its officers and agents, refused and failed and does now refuse and fail to reinstate to their regular positions of employment the following persons, employees of respondent:

Andrew Rode, Edward Kaucic, Lester Crump, Charles Warner, John Kondrath, Thomas E. Fagan, John Starovich, Harold Dreyer, Raymond DuBois, Angelo Galbavy, William D. Magness, Al Bunton, Joseph Petraitis, Edward Schuman, Fred Hensley, Anton Nagode, John Praski, Luther Small, Edward Brunke, Stanley Grum, Jerome Camernick, Jr., Clarence Dreyer, Carl A. Swanson, Fred Yaeger, Art Holm, Jr., W. D. Crump, Joseph Aigner, Frank Moxey, Harry H. Rayner, Phil Graimer, Robert Pratt, Jasper Leskovec, Frank Museck, Ed. Ruck, Mike Zelenick, John Grom, Andy M. Anderson, Oscar Johnson, Nick Bankowisch, Frank Latz, Steve Ark, Paul Wells, Joan Bissonnette, Virginia Butterfield, Isabelle Recktenwald, Vivian Johnson, John Kudith, Victor Hertel, Elmer Luke, John W. Jackoway, Elsworth Peters, Charles E. Fulkerson, Charles E. Fulkerson, Jr., Fern Gartley, Barthol Prutovey, Eric Lindberg, George Kallio, Nate Mogel, Victor Weatherhead, Art Holm, Sr., Jack Taylor, Bessie Luczo, Tillie Mesec, Alan White, Frank Zelenick, Ted Christianson, Roy Brown, Leo P. Daluga, Merritt Pratt, Peter Skarbalus, Gus.
Canclakes, Joseph Chudy, George W. Smith, Arno Romp-
52 paine, Orville Romppaine, Joseph Richveis, Marguerite
Siefert, Evelyn Gramer, Frances Fellens, Joseph Hoff, Theodore Ohlson, Tony Kancilja, David Nostell, Steve Luczo, Eugene D. Hendee, Vincent Ditmeyer, George Mondro, Otto Latz, Frank Furlan, Joe Lima, Herman Latz, Sonny Shure and Paul Makoval,

and each of them, for the reason of their membership in the

union and that they had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

12. By the refusal to reinstate the above named individuals and each of them as above set forth to their regular positions of employment, the respondent did discriminate and is discriminating in regard to the tire and tenure of employment of the above named individuals and each of them, and did discourage and is discouraging membership in the union, and did thereby engage in and is now engaging in unfair labor practices within the meaning of Section 8, Subdivision (3) of said Act.

13. On September 10, 1936 and thereafter the respondent, while engaged in operations at the North Chicago Plant as above described, through its officers, agents and servants; to-wit A. J. Anslem, Superintendent; Luther Henry, Assistant Superintendent; James Hall, foreman and F. Schardt, foreman, did attempt to organize a company union of its employees and to that end the employees were threatened with the loss of employment for failure to join said company union; on and after February 27, 1937 and thereafter respondent caused to be organized in its plant at North Chicago, Illinois a labor organization of its employees known as Rare Metal Workers of America Local No. 1, and did dominate and interfere with its formation by its officers, agents and servants soliciting members therein, by threatening employees with loss of employment for failure to join said organization and by contributing financial and other support to said organization; all of such acts and each of them had and have for their intent and purpose the effect of restraining, coercing and interfering with the exercise by employees of
53 rights guaranteed in Section 7 of the Act and respondent by such acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (2) of the Act.

14. On February 17, 1937 by reason of the acts and conduct of the respondent herein described, the production and maintenance employees of respondent went on strike and all the normal operations and business of respondent, except laboratory experiments, ceased.

15. By all such acts, and each of them enumerated in paragraph #6 above, by the refusal to meet with, deal, negotiate and bargain with said union as the representative of its employees; by the discharge and refusal to reinstate its employ-

ees as enumerated in paragraphs 8, 9, 10 and 11 above; by the attempted formation and formation and domination of a company union as enumerated in paragraph 13 above, the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and by all said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

16. The activities of respondent set forth in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 above, occurring in connection with the operation of respondent described in paragraphs 1 and 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent enumerated in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13 constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1), (2), (3) and (5) and Section 2, Subdivisions (6) and (7) of said Act.

54 Wherefore, the National Labor Relations Board on this 25th day of May, 1937 issues its complaint against the Fansteel Metallurgical Corporation, respondent herein.

Notice of Hearing.

Please Take Notice that on the 7th day of June, 1937 at 10:00 o'clock Central Daylight Saving Time in the forenoon, at Room 4, New U. S Post Office Building, Waukegan, Illinois, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with said Rules and Regulations, Series 1, as amended, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Acting Regional Director for the Thirteenth Region, with offices at Room 866, 20 North Wacker Drive, Chicago, Illinois, acting in this matter as the agent of the National Labor Relations Board, an answer to the attached complaint on or before the First day of June, 1937.

Enclosed herewith for your information is a copy of Rules

and Regulations—Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing to be signed by the Acting Regional Director for the Thirteenth Region on the 25th day of May, 1937.

Leonard C. Bajark,
Acting Region Director,
Thirteenth Region,
Room 866, 20 North Wacker Drive,
Chicago, Illinois.

55 Service Acknowledged and Copy Received this 26th Day of May, 1937, at 2:25 P. M.

Levinson, Becker, Peebles & Sarien,
By L. Greenberg,
For the Fansteel Metallurgical Corporation, Respondent.

For the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66.

56 Before the National Labor Relations Board.
* * (Caption—XIII-C-80) * *

AMENDED CHARGE.

Received May 21, 1937.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Fansteel Metallurgical Corporation, 1009-22nd Street, North Chicago, Illinois, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2), (3) and (5) of said Act, in that

On September 10, 1936, September 21, 1936, and February 21, 1937, and thereafter, the Company failed to bargain collectively with Lodge 66, Amalgamated Asssociation of Iron, Steel and Tin Workers of North America, as representative of the Production and Maintainance Employees.

That on September 10, 1936, the Company attempted to form a Company Union and on and after February 27, 1937, did dominate and interfere with the administration and formation of a labor organization known as Rare Metal Workers of America, Local No. 1.

That the Company did discharge 95 of its employees on February 17, 1937, for the reason that they were members of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

That on February 27, 1937, and thereafter, the Company has refused to reinstate 95 of its said employees for the reason that they engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

That from August 17, 1936, to December 1, 1936, the Company hired a labor spy to interfere with, restrain and coerce the employees in the exercise of their rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organizationmaking the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,
Organizer for Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66.
108 S. Genesee Avenue,
Waukegan, Illinois.

Subscribed and sworn to before me this 21st day of May, 1937.

Anna M. Naun,
(Seal) *Notary Public.*

58 NATIONAL LABOR RELATIONS BOARD

RULES AND REGULATIONS

Series 1, as Amended

and

NATIONAL LABOR RELATIONS ACT

(48 Stat. 449)

April 27, 1936

(Seal)

United States
Government Printing Office
Washington : 1937

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59 NATIONAL LABOR RELATIONS BOARD

J. Warren Madden, Chairman
John M. Carmody
Edwin S. Smith

Benedict Wolf, Secretary
Charles Fahy, General Counsel

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61 NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

Rules and Regulations
Series 1, as Amended

General Rules and Regulations

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby issues the following Rules and Regulations—Series 1—as amended (General Rules and Regulations), which it finds necessary to carry out the provisions of said Act. Said Rules and Regulations—Series 1—as amended shall become effective upon the signing of the original by the members of the Board and upon the publication thereof in the Federal Register, and shall supersede the Rules and Regulations—Series 1—as amended (General Rules and Regulations) signed by the Board on April 15, 1935, which are hereby rescinded. The Rules and Regulations—Series 1—as amended (General Rules and Regulations) shall be in force and effect until amended or rescinded by rules and regulations hereafter made and published by the Board.

Signed at Washington, D. C., this 27th day of April, 1936.

J. Warren Madden, *Chairman.*
John M. Carmody, *Member.*
Edwin S. Smith, *Member.*

Article I

Definitions

Section 1. The terms "person", "employer", employee", "representatives", "labor organization", "commerce", "affecting commerce", and "unfair labor practice", as used herein, shall have the meanings set forth in Section 2 of the National Labor Relations Act, a copy of which Act is appended hereto.

Sec. 2. The term "Act" as used herein shall mean the National Labor Relations Act, and the term "Board" shall mean the National Labor Relations Board.

62 Sec. 3. The term "Region" as used herein shall mean that part of the United States or any Territory thereof fixed by the Board as a particular Region.

Sec. 4. The term "Regional Director" as used herein shall mean the agent designated by the Board as Regional Director for a particular Region.

Sec. 5. The term "Trial Examiner" as used herein shall mean the Board, its member, agent or agency conducting the hearing.

Sec. 6. The term "State" as used herein shall include all States, Territories, and possessions of the United States and the District of Columbia.

Article II

Procedure Under Section 10 of the Act for the Prevention of unfair Labor Practices

Charge

Section 1. A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, the Regional Director shall dismiss any complaint based thereon.

Sec. 2. Except as provided in Section 37 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the Regional Director for any of such Regions.

Sec. 3. Such charge shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgements. Three additional copies of such charge shall be filed. A blank form for making a charge will be supplied by the Regional Director upon request.

Sec. 4. Each charge shall contain the following:

(a) The full name and address of the person or labor organization making the charge.

(b) The full name and address of the person against whom the charge is made (hereafter referred to as the "respondent").

(c) A clear concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence.

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Complaint

Sec. 5. After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the "parties to the proceeding") a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint.

Sec. 6. Upon his own motion or upon proper cause shown by any of the parties to the proceeding the Regional Director issuing the complaint may extend the date of such hearing.

Sec. 7. Any such complaint may be amended by the Trial Examiner or the Board in his or its discretion at any time prior to the issuance of an order based thereon, upon such terms as may be deemed just.

Sec. 8. Any such complaint may be withdrawn before the hearing by the Regional Director on his own motion.

Sec. 9. If, after the charge has been filed, the Regional Director declines to issue and cause to be served a complaint, the person or labor organization making the change may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director.

Answer

Sec. 10. The respondent shall have the right, within five days from the service of the complaint, to file an answer thereto. Such answer shall contain a short and simple statement of the facts which constitute the grounds of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation in the com-

plaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board.

Sec. 11. Such answer shall be filed with the Regional Director issuing the complaint. Such answer shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post-office address of the respondent. The respondent shall file three additional copies of the answer for the use of the Board. Immediately upon filing his answer the respondent shall serve a copy thereof upon each of the other parties to the proceeding.

Sec. 12. Upon his own motion or upon proper cause shown by respondent the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

Sec. 13. In any case where a complaint has been amended the respondent shall have an opportunity to amend his answer within such period as may be fixed by the Trial Examiner, if he amends the complaint, or by the Board, if it amends the complaint.

Motions

Sec. 14. All motions made previous to or subsequent to the hearing shall be filed in writing with the Regional Director issuing the complaint, and shall briefly state the order or relief applied for and the grounds for such motion. The moving party shall file an original and three additional copies of all such motions for the use of the Board. Immediately upon the filing of such motion, the moving party shall serve a copy thereof upon each of the other parties to the proceeding. All motions made at the hearing (except motions to intervene, as provided in Section 19 of this Article) shall be stated orally and included in the stenographic report of the hearing.

Sec. 15. The Trial Examiner designated to conduct the hearing shall rule upon all motions (except as provided in Sections 6, 12, and 19 of this Article). The Trial Examiner may, before the hearing, rule on motions filed previous to the hearing, and shall file his ruling, and any order in connection therewith, with the Regional Director issuing the complaint. The Regional Director shall cause copies thereof to be served

upon the parties to the proceeding. Rulings on motions, and any orders in connection therewith, if announced at the hearing, shall be stated orally and included in the stenographic report of the hearing; in all other cases they shall be issued in writing and filed with the Regional Director, who shall cause a copy of the same to be served upon each of the parties to the proceeding, or shall be contained in the Intermediate Report. Whenever the Trial Examiner has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to Section 37 of this Article, the Board shall rule on such motion.

Sec. 16. All motions, rulings, and orders shall become part of the record in the proceeding, and rulings and orders claimed to be substantially prejudicial shall be reviewed by the Board, upon request made for such review, in conjunction with the Board's consideration of the Intermediate Report.

65 Sec. 17. If any motion in the nature of a motion to dismiss the complaint is granted by the Trial Examiner, the party making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., stating the grounds for review, and filing a copy of such request with the Regional Director and the other parties to the proceeding. Unless such request for review is filed within ten days from the date of the order of dismissal, the case shall be considered closed. The Board may, upon motion made within a reasonable period and for good cause shown, reopen the record for further proceedings.

Sec. 18. The right to make motions or to make objection to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Trial Examiner or the Board.

Intervention

Sec. 19. Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing with the Regional Director issuing the complaint setting out the grounds upon which such person or organization claims to be interested. The original of such motion shall be signed and sworn to by the person or labor organization filing the motion, who shall file three additional copies of such motion for the use of the Board. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the

other parties to the proceeding. The Regional Director shall rule upon all such motions filed prior to the hearing, and the Trial Examiner shall rule upon all such motions filed at the hearing, in the manner set forth in Section 15 of this Article. The Regional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just. The Regional Director shall cause a copy of said ruling to be served upon each of the parties to the proceeding.

Witnesses and Subpenas

Sec. 20. Witnesses shall be examined orally under oath, except that for good and exceptional cause the Trial Examiner may permit their testimony to be taken by deposition under oath. Any such deposition shall be taken in accordance with the procedural requirements for the taking of depositions provided by the law of the State in which the hearing is pending.

Sec. 21. Any member of the Board may issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents that relate to any matter under investigation or in question, before the Board, its member, agent, or agency, conducting the hearing or investigation. Applications for the issuance of such subpenas may be filed by any party to the proceedings with the Regional Director, or, during the hearing, with the Trial Examiner. Such applications shall be timely and shall specify the name of the witness and the nature of the facts to be proved by him, and must specify the documents, the production of which is desired, with such particularity as will enable them to be identified for purposes of production.

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Sec. 22. Witnesses summoned before the Trial Examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

Hearing

Sec. 23. The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner specifically designated by the Board, by the Chief Trial Examiner, or by the Regional Director. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. Such hearings shall be public, unless otherwise ordered by the Trial Examiner.

Sec. 24. It shall be the duty of the Trial Examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence.

Sec. 25. Any party to the proceeding shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

Sec. 26. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

Sec. 27. In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

Sec. 28. Any objection with respect to the conduct of the hearing, including any objection to the introduction of
67 evidence, shall be stated orally, together with a short statement of the grounds of such objection, and included in the stenographic report of the hearing. No such objection shall be deemed waived by further participation in the proceeding.

Sec. 29. Any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. The parties shall be entitled to file briefs or written statements only with permission of the Trial Examiner.

Sec. 30. In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice.

Sec. 31. Contemptuous conduct at any hearing before a Trial Examiner or before the Board shall be ground for exclusion from the hearing. The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall be ground for the striking out of all testimony previously given by such witness on related matters.

Intermediate Report and Transmission of Case to the Board

Sec. 32. After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report, which he shall file with the Regional Director issuing the complaint, who will thereafter transmit the original of the Intermediate Report to the Board in Washington, D. C., and cause a copy thereof to be served upon each of the parties to the proceeding. Such report shall contain (a) findings of fact, separately stated and numbered, and (b) recommendations as to what disposition of the case should be made, which may include, if it be found that respondent has engaged in or is engaging in the alleged unfair labor practice, a recommendation as to what affirmative action should be taken by respondent to bring about a condition in harmony with the law.

Sec. 33. Thereafter the Regional Director issuing the complaint shall forward to the Board in Washington, D. C., the charge, complaint, amended complaint, notice of hearing, answer amended answer, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the Intermediate Report and exceptions, shall constitute the record in the case.

Exceptions to the Record and Intermediate Report.

Sec. 34. If any party desires to take an exception to the Intermediate Report or to any other part of the record
68 (including rulings upon all motions or objections) he shall within ten days from the date of service of the Intermediate Report file with the Board at Washington, D. C., four copies of a statement in writing setting forth such exceptions. Immediately upon the filing of the statement of exceptions the party filing the same shall serve a copy thereof upon each of the other parties to the proceeding. Upon proper

cause shown, the Board may extend the period within which to file a statement of exceptions.

Sec. 35. No matter not included in a statement of exceptions may thereafter be objected to before the Board, and failure to file a statement of exceptions shall operate as submission of the case to the Board on the record and the Intermediate Report.

Procedure Before the Board

Sec. 36. Where the Trial Examiner has found in his Intermediate Report that the respondent has engaged in or is engaging in unfair labor practices affecting commerce, the Board may, upon the expiration of the period for filing a statement of exceptions, as provided in Section 34 of this Article, decide the matter forthwith upon the record, or after the filing of briefs, or oral argument, or may reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board or other agent or agency, or may make other disposition of the case. The Board shall notify the parties of the time and place for any such submission of briefs, oral argument, or taking of further evidence.

Where the Trial Examiner has found in his Intermediate Report that the respondent has not engaged in and is not engaging in unfair labor practices affecting commerce, and no exceptions have been filed within the period for filing a statement of exceptions as provided in Section 34 of this Article, the case shall be considered closed. The Board may, upon motion made within a reasonable period and upon proper cause shown, reopen the record for further proceedings in accordance with this Section.

Sec. 37. Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it, in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto—

(a) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same region; or

69 (c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purpose.

The provisions of Sections 3 to 31, inclusive, of this Article shall, in so far as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the trasnfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 36, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

Sec. 38. After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 37 of this Article, the Board may—

(a) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 36, inclusive, of this Article shall in so far as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

(b) decide the matter forthwith upon the record, or after the filing of briefs or oral argument; or

(c) reopen the record and receive further evidence, or require the taking of further evidence before a member of the Board, or other agent or agency; or

(d) make other disposition of the case.

The Board shall notify the parties of the time and place of any such submission of briefs, oral argument, or taking of further evidence.

Article III

Procedure Under Section 9 (c) of the Act for the Investigation and Certification of Representatives

Section 1. A petition requesting the Board to investigate and certify under Section 9 (c) of the Act the name or names of the representatives designated or selected for the purpose of collective bargaining may be filed by any employee or any person or labor organization acting on his behalf (hereinafter

referred to as the "petitioner"). Except as provided in Section 10 of this Article, such petition shall be filed with
70 the Regional Director for the Region wherein the contemplated bargaining unit exists, or, if the contemplated bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Such petition shall be in writing, the original being signed and sworn to before any notary public or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of the petition shall be filed. A blank form for filing such a petition will be supplied by the Regional Director upon request.

Sec. 2. Such petition shall contain the following:

(a) The name and address of the petitioner.

(b) The name and address of the employer or employers involved, the general nature of their businesses, and the approximate number of their employees.

(c) A description of the bargaining unit claimed to be appropriate, the approximate number of employees therein, the number and classifications of employees which the representatives on whose behalf the petition is filed claim to represent, the names of any other known individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit.

(d) A brief statement setting forth the nature of the question or controversy affecting commerce that has arisen concerning representation.

(e) Any other relevant facts.

Sec. 3. If it appears to the Board that an investigation should be instituted it shall so direct and (except as provided in Section 10 of this Article) shall authorize the Regional Director to undertake such investigation, and to provide for an appropriate hearing upon due notice, either in conjunction with a proceeding instituted pursuant to Section 5 of Article II of these Rules and Regulations, or otherwise. The Regional Director shall thereupon proceed with such investigation and in connection therewith shall prepare and cause to be served upon the petitioners, upon the employer or employers involved, and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation (all of whom are hereinafter referred to as "the parties to the proceeding"), a notice of hearing upon the question of representation before

a Trial Examiner at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

Sec. 4. All matters relating to motions, interventions, witnesses, and subpenas shall be governed by the provisions of sections 14 to 22, inclusive, of Article II of these Rules and Regulations.

71 Sec. 5. The hearing upon the question of representation shall be conducted by a Trial Examiner specially designated by the Board, by the Chief Trial Examiner, or by the Regional Director, and shall be open to the public unless otherwise ordered by the Trial Examiner. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. It shall be the duty of the Trial Examiner to inquire fully into the question of representation. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence.

Sec. 6. The introduction of evidence at the hearing and the rights of the parties to the proceedings shall be governed by Sections 25 to 31, inclusive, of Article II of these Rules and Regulations.

Sec. 7. Upon the close of the hearing the Regional Director shall forward to the Board in Washington, D. C., the petition, notice of hearing, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which shall constitute the record in the proceeding.

Sec. 8. The Board shall thereupon proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or after further hearing, as it may determine, to certify to the parties to the proceeding the name or names of the representatives that have been designated or selected, or to direct a secret ballot of the employees in order to complete the investigation, or to make other disposition of the matter.

Sec. 9. Where the Board determines that a secret ballot should be taken it shall direct such ballot to be conducted by a designated agent upon such terms as it may specify. Upon conclusion of such ballot the agent conducting the ballot shall prepare an Intermediate Report containing a tally of the ballots, his findings and recommendations, which he shall cause to be served upon the parties to the proceeding. Within five days thereafter the parties to the proceeding may file with

the Regional Director any objection to the ballot or the Intermediate Report. If it appears to the Regional Director that any such objection raises a substantial and material issue with respect to the conduct of the ballot he shall issue and cause to be served upon the parties a notice of hearing on said objections before a Trial Examiner. Said Trial Examiner shall consider such objections raised to said ballot and shall prepare and file with the Regional Director a report containing findings and recommendations with respect thereto. Thereafter the Regional Director shall forward to the Board in Washington, D. C., the Intermediate Report of the agent conducting the ballot, the objections filed thereto, the notice of hearing, motions, rulings, orders, the stenographic report
72 of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article. If no objection raising a substantial and material issue with respect to the conduct of the ballot is filed to the Intermediate Report of the agent conducting the ballot the Regional Director shall forward directly to the Board in Washington, D. C., the Intermediate Report, which, together with the record previously made, shall constitute the record in the case. The Board shall thereupon proceed as set forth in Section 8 of this Article.

Sec. 10. Whenever the Board deems it necessary in order to effectuate the purpose of the Act, it may—

(a) permit a petition requesting an investigation and certification to be filed with it, and may upon the filing of such petition proceed to conduct an investigation under Section 9 (c) of the Act, or direct any Regional Director, or other agent or agency, to conduct such an investigation; or

(b) upon its own motion conduct, or direct any member, Regional Director, or other agent or agency to conduct an investigation under Section 9 (c) of the Act; or

(c) at any time after a petition has been filed with a Regional Director pursuant to Section 1 of this Article, order that such petition, and any proceeding which may have been instituted in respect thereto—

(1) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(2) be consolidated, for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same Region; or

(3) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in such other Region, or for any other purpose.

The provisions of this Article shall, insofar as applicable, apply to proceedings conducted pursuant to subsections (a), (b), and (c) (1) of this Section, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board, or by the Regional Director, or other agent or agency, directed to conduct the investigation. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to subsection (c) (3) of this Section, the provisions of this Article shall apply to such proceeding as if the Board had originally directed that the investigation be conducted in the Region to which the transfer is made.

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Article IV

Designation of Regional Directors, Examiners, and Attorneys as Agents of the Board

Section 1. All Regional Directors now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigations, in accordance with Section 9 (c) of the Act.

(c) To issue and cause to be served complaints, to amend complaints, and to conduct hearings upon such complaints, in accordance with Section 10 (b) of the Act.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Sec. 2. All Examiners now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees), in accordance with Section 9 (c) of the Act.

(c) To have access to and the right to copy evidence, and to administer oaths and affirmations, in accordance with Section 11 (1) of the Act.

Sec. 3. All Attorneys now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigation, in accordance with Section 9 (c) of the Act.

(c) To amend complaints issued under Section 10 (b) of the Act and to conduct hearings upon complaints issued in accordance with Section 10 (b) of the Act.

74 (d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Sec. 4. The foregoing designations shall not be construed to limit the power of the Board to make such special designation of agents as may in its discretion be necessary or proper to effectuate the purposes of the Act.

Article V

Service of Papers

Section 1. Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

Sec. 2. Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

Article VI

Certification and Signature of Documents

Section 1. The Secretary of the Board, or in the event of his absence or disability, the Assistant Secretary of the Board, shall certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time.

Sec. 2. The Secretary of the Board, or in the event of his absence or disability, the Assistant Secretary of the Board, is hereby authorized to sign all orders of the Board, and sign and issue all complaints authorized to be issued by the Board.

Article VII

Construction of Rules

Section 1. These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the Act.

Article VIII

Amendments

Section 1. Any rule or regulation may be amended or rescinded by the Board at any time.

Appendix.

National Labor Relations Act

(48 Stat. 449)

An Act

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Findings and Policy

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of indus-
77 trial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions.

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Ter-
78 **ritory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.**

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of

commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

National Labor Relations Board.

Sec. 3 (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

[1] So in original.

79 (b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individual for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board

in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Sec. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

Rights of Employees.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 .

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of

employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

81 (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Representatives and Elections.

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due

notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain[1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Prevention of Unfair Labor Practices.

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the

[1] So in original.

said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

83 (e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such tempo-

rary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit courts of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought
84 may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the

Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

Investigatory Powers

Sec. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duty authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investiga-
85 tion or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such

attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appeal before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same

fees as are paid for like services in the courts of the United States.

86 (5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

Limitations.

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

87 RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card.

A. A. of I. S. & T. W. of N. A.
(Signature or name of addressee)
T. F. Rich.
(Signature of addressee's agent)

Date of delivery, 5/27, 1937.

88 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

MOTION.

(Board Exhibit 1-C).

To: Leonard C. Bajork, Esq. Regional Director for the Thirteenth Region.

Now comes Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, and respectfully moves that:

(a) The time for filing its answer to the Complaint in the above entitled proceeding be extended to and including June 7, 1937; and

(b) The date of hearing upon said Complaint be adjourned from June 7, 1937, the date specified in the notice, for a period of at least ten (10) days.

In support of the foregoing motion, the respondent represents as follows:

1. On February 17, 1937, a group of employees of the respondent, dominated by a number of men named in
89 Paragraph 8 of the Complaint, and acting at the instigation and under the direction of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, forcibly evicted from the plant of the respondent at North Chicago, Illinois, the officers and agents of the respondent and the employees not associated with them in their violence, and by force and arms seized two important buildings owned by the respondent and forming part of its

plant and barricaded themselves in such buildings refusing to leave and refusing to permit the respondent's officers and representatives to enter therein. Thereupon, on the 18th day of February, 1937, proceedings were instituted by the respondent in the Circuit Court of Lake County, Illinois, to compel the restoration of its plant and the removal of said persons from possession thereof and to enjoin the continuance of violence. After due notice and upon full hearing, an injunctional order was entered on February 18, 1937, requiring the restoration of the seized portions of the plant to the respondent and restraining violence and other illegal acts. The persons so occupying the premises refused to comply with such court writ when served by the Sheriff of Lake County, Illinois, and thereupon, upon application of the respondent, a writ of attachment was issued against the persons occupying said premises, including a substantial number of those named in Paragraph 8 of the Complaint herein, requiring the Sheriff of Lake County, Illinois, to arrest such persons and bring them before the bar of that court. The Sheriff and a large number of his deputies endeavored to enforce such writ but the persons so unlawfully occupy-
90 ing the plant resisted the Sheriff with violence. Thereafter, the Sheriff made another effort to enforce the writ and succeeded in removing the persons from the plant.

2. Thereupon, said persons, and certain others engaged in assisting them in their unlawful conduct, were cited by the Circuit Court of Lake County to show cause, if any they had, why they should not be held in contempt of that court for violating its injunctional orders and interfering with the execution of its regular process. Various proceedings in connection with such citation have heretofore been held and the final hearing upon the contempt proceedings has been set before the Circuit Court of Lake County, Illinois, on June 2, 1937, such date having been fixed prior to the issuance of the Complaint in this proceeding.

3. The hearing upon respondent's application for a final decree and permanent injunction was also heretofore, and prior to the filing of the Complaint herein, set for hearing in the aforesaid court on June 2, 1937.

4. The preparation for the aforementioned judicial hearings will require the constant time and attention of counsel for the company and its principal officers between the date hereof and the date of the hearing. It is also expected that

said hearing will require several days, the exact number of which is now impossible to estimate, and will require the
91 attendance of such counsel and officers and a large number of employees of the respondent. In addition, many persons whose testimony will be required at the hearing upon the above entitled Complaint will be detained at such judicial hearing.

5. The Complaint filed in the above proceeding comprehends a large number of different matters, the evidence in connection with which will require substantial preparation and the locating and interviewing of a large number of witnesses.

Wherefore, respondent respectfully prays that its aforementioned applications may be duly granted.

Fansteel Metallurgical Corporation,
By R J Aitchison,
President.

State of Illinois, } ss.
County of Cook. }

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President and duly authorized representative of Fansteel Metallurgical Corporation; that he is familiar with the matters and things set out in the above and foregoing motion and that the same are true in all respects.

R. J. Aitchison,

Sworn To and subscribed before me this 27th day of May, A. D. 1937.

Varian M. Bates,
Notary Public.

(Seal)

93 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

AFFIDAVIT IN SUPPORT OF RESPONDENT'S MOTION FOR EXTENSION OF TIME TO ANSWER AND ADJOURNMENT OF DATE OF HEARING.

(Board Exhibit 1-D.)

State of Illinois, } ss.
County of Cook. }

MAX SWIREN, being first duly sworn, on oath deposes and says that:

1. He is a member of the firm of Levinson Becker Peebles & Swiren, general counsel for Fansteel Metallurgical Corporation, the respondent in the above entitled proceeding.

2. On February 17, 1937, two of the buildings of the North Chicago plant of the respondent were violently seized, as set out in the respondent's motion. From the date of such seizure, February 17, 1937, until the date hereof, all of the legal matters arising out of such violent seizure have been handled exclusively by affiant and Harold M. Keele, associated with affiant's firm, and Sidney H. Block, of Waukegan, Illinois, who received only assistant from
94 time to time with respect to research and other details from junior associates of affiant's firm. None of the partners or associates of affiant's firm, other than Harold M. Keele and affiant, are sufficiently conversant with the matters and things involved in the litigation pending in the Circuit Court of Lake County, Illinois, as set out in respondent's motion, or in the above entitled proceedings, to prepare or handle the same without undue prejudice to the rights of the respondent.

3. On May 19, 1937, which was one week prior to the issuance or receipt of the complaint in this case and two days prior to the date of the charges upon which the complaint is based, the proceedings in the Circuit Court of Lake County, Illinois, which had been pending since February 18, 1937, were set for final hearing upon the application of respondent for a permanent injunction and the disposition of the

rules to show cause why certain persons should not be held in contempt, and other matters in connection therewith. Such matters were set for hearing on June 2, 1937, in the courthouse at Waukegan, Illinois, said matters having been previously continued on several occasions on application of the defendants and over the protest of affiant and his associates on behalf of the respondent. Said hearing will require and involve the testimony of approximately 150 to 200 witnesses in addition to documentary evidence and the consideration of legal arguments. In order adequately to prepare
for such hearing, it has been necessary for all of said
95 counsel, including affiant together with several junior
associates of affiant's firm, to devote substantially all of their time to the preparation for said hearing, the interviewing of witnesses and the briefing of legal questions, and such preparation must necessarily continue until the date of the hearing. By reason of the large number of witnesses involved and the numerous and complicated issues to be presented, it will be necessary, for the due protection of respondent's interests, that said hearing before the Circuit Court of Lake County be attended by affiant and said Harold M. Keele and Sidney H. Block, and that during the progress of said hearing said junior associates of affiant's firm continue to render assistance in connection with matters arising during the hearing. By reason of the matters and things set out above, affiant verily believes that the afore-described hearing before the Circuit Court of Lake County, Illinois, will require full daily hearings for at least one week.

4. The aforementioned affiant and Harold M. Keele and Sidney H. Block are the only attorneys sufficiently familiar with the matters and things involved in the above entitled matter to enable them to permit the proper defense and protection of respondent's interests at the hearing upon the complaint in this proceeding. In order properly to prepare for the hearing on said complaint, including the interviewing of witnesses estimated in number at approximately 100,
and the preparation of legal briefs involving varied and
96 novel questions of law, it will be necessary for affiant and
said Harold M. Keele and Sidney H. Block, assisted by junior associates of affiant, to devote at least ten days to the preparation of respondent's case. The hearing in the above entitled cause has now been set for June 7, 1937, which is only five days subsequent to the aforementioned hearing before the Circuit Court of Lake County, Illinois, and will

inevitably fall on a day during which said hearing in Lake County will be in progress and before respondent's counsel above mentioned will have been afforded an adequate opportunity to prepare respondent's case.

5. All of the matters and things charged in the complaint are alleged to have occurred more than two months prior to the filing of the charge or issuance of the complaint and in many instances as much as seven months prior to such dates. The granting of respondent's motion, which is essential for the adequate preparation and presentation of its case in the above entitled cause, would result in a hearing less than thirty days after the filing of the charge upon which the complaint is based and would constitute expeditious hearing.

6. The granting of the motion of the respondent would in no respect prejudice any of the persons involved in this proceeding and a denial of the motion will, by reason of the matters and things set forth above, deny to the respondent the benefits and protection of the due process provisions of the Constitution of the United States.

Max Swiren,
Affiant.

Sworn To and subscribed before me this 28th day of May, A. D. 1937.

Varian M. Bates,
Notary Public.

(Seal)

98 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

ORDER.

(Board Exhibit 1-E.)

This cause came on to be heard before Leonard C. Bajork, Acting Regional Director, Thirteenth Region, National Labor Relations Board, on the motion of the respondent and affidavits in support thereof, and upon due consideration thereof the said Acting Regional Director finds that the motion for leave to extend the filing of respondent's answer should be granted in part and the motion to adjourn the date of hearing from June 7, 1937 for a period of ten days should be denied. It is accordingly

Ordered that the motion of the respondent to extend the time for filing its answer to the complaint be and the same is hereby granted and the time for filing respondent's answer to said complaint is extended to June 4, 1937.

It Is Further Ordered that the motion of the respondent to adjourn the date of hearing upon said complaint be and the same is hereby denied.

Leonard C. Bajork,
Acting Regional Director Thirteenth Region.

Dated at Chicago, Illinois this 29th day of May, 1937.

99 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

ANSWER OF FANSTEEL METTALLURGICAL CORPORATION.

(Board Exhibit 1-F.)

Now comes Fansteel Metallurgical Corporation, the respondent in the above entitled proceeding, and makes answer to the complaint filed herein by the National Labor Relations Board, and says that:

1. The allegations in Paragraphs 1 and 2 of the complaint are admitted, but respondent avers that all of its manufacturing operations are carried on wholly within the State of Illinois and are entirely intrastate in character. None of the persons listed in Paragraphs 8 and 11 of the complaint were employed by the respondent except in such intrastate manufacturing operations.

2. Respondent has no knowledge with respect to the matters and things set out in Paragraph 3 of the complaint and therefore calls for strict proof thereof.

3. Respondent denies the allegations of Paragraph 4
100 of the complaint. Respondent avers that by reason of the character of the work performed and the prevailing and accepted practice at respondent's plant in North Chicago, Illinois, and in Lake County, Illinois, generally, persons performing maintenance services have, for many years, organized and bargained collectively along individual craft lines, and many of the maintenance employees of respondent were

at the several times mentioned in the complaint, and for a long period of time prior thereto, members of individual craft unions. By reason of the foregoing, the inclusion of maintenance workers in the production workers' unit would tend to defeat rather than to effectuate the purposes and policies of the National Labor Relations Act, and an appropriate unit for the purposes of collective bargaining of the production workers employed by the respondent should exclude maintenance workers, who can be replaced by independent contractors and whose services are not essential for successful production and the operation of the respondent's business.

4. Respondent denies each and all of the allegations of Paragraph 5 of the complaint. Respondent avers that neither on September 10, 1936, nor prior to that time, nor at any time since that date, did a majority of the employees employed by the respondent in production, or a majority of the employees employed by the respondent in production and maintenance, authorize or designate the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66 (hereinafter called the "Steel Union") as the representative of such employees for the purpose of collective bargaining with respondent. Respondent further avers that in a large number of instances, employees of respondent 101 were compelled, by harassment, coercion, intimidation, threats and other forms of duress, to execute cards purporting to apply for membership in the Steel Union and purporting to authorize the Steel Union to act for such employees in collective bargaining with the respondent; that all such authorizations and memberships so obtained by duress, in any form, are null and void and confer no right or authority upon the Steel Union. Respondent further avers that the Rare Metal Workers of America, Local No. 1, a labor organization organized as a corporation under the laws of the State of Illinois, is now, and for some time past has been, the duly authorized representative of approximately ninety per cent of the employees of respondent employed in production, and by reason of its representation of more than a majority of such employees is, under the terms of Section 9(a) of the National Labor Relations Act, the exclusive representative of all employees employed in such work for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and respondent has been, and is now, engaged in bar-

gaining collectively with said labor organization with respect to such matters.

5. Respondent denies the allegations contained in Paragraph 6 of the complaint and further denies that it has at any time engaged, or is now engaging, in any unfair labor practices as defined by Section 8, Subdivision (5) of the National Labor Relations Act.

6. Respondent denies each and all of the allegations contained in Paragraph 7 of the complaint, and avers that:

102 (a) At no time prior to April, 1937, did the respondent enter into any contract or arrangement with the National Metal Trades Association either for the purposes set out in Paragraph 7 of the complaint or for any other purpose whatsoever.

(b) On or about August 17, 1936, respondent did, through the National Metal Trades Association, engage Alfred Johnstone for the purpose of working in the respondent's plant and observing and reporting upon all matters coming to his attention respecting plant production, efficiency of plant supervision, efficiency of tool and machine equipment, the morale of employees, shop working conditions, and all other factors reflected in the prevailing rate of production. Said Johnstone continued in the employ of respondent until December 7, 1936, and respondent did not, either through Johnstone or anyone else, at any time interfere with, restrain or coerce any of its employees in the exercise of their rights guaranteed by the National Labor Relations Act. All of the allegations of the complaint that the said Johnstone was employed for any purpose other than the purposes hereinbefore expressly set forth, and all of the allegations of the complaint that the said Johnstone, in the scope of his employment by the respondent, took an active part in the work of the Steel Union, are specifically denied.

(c) On September 8, 1936, A. J. Anselm resumed his position as Plant Superintendent of the respondent for the purpose of managing and supervising the production and operations of respondent's plant and for no other purposes

103 whatsoever. Said A. J. Anselm has been employed continuously by the respondent and its subsidiary or affiliated companies since February, 1919, serving for more than thirteen years as Plant Superintendent until 1932, at which time he resumed the duties of technical sales engineer for respondent's principal subsidiary. Said A. J. Anselm was returned to the position of Plant Superintendent shortly after that posi-

tion became vacant as a result of the advancement of the Plant Superintendent to the position of Vice-President of the company.

(d) On or about November 11, 1936, John Kondrath was transferred from the machine shop to the development laboratory of the master mechanic to assist in the development and improvement of machines and machine parts required in the production units of respondent. Respondent denies that said Kondrath was forbidden to associate or talk with any of the employees of the respondent, and further avers that neither said Kondrath nor anyone else was heretofore authorized to engage in any activities in respondent's plant and upon the respondent's property for the purpose of organizing or soliciting memberships for the Steel Union.

(e) Neither at the time of the restoration to the respondent of the buildings forming part of its plant, which had been seized and retained by violence at the instigation of the Steel Union, nor at any other time, did the respondent or anyone authorized to act on its behalf impose, or seek to impose, as a condition of reinstatement or reemployment of any of the employees or former employees of the respondent, the waiver or abandonment of any rights guaranteed by the National Labor Relations Act or by any other statute. Respondent
104 denies that it at any time engaged in any acts whether as set forth in Paragraph 7 of the complaint or otherwise, constituting unfair labor practices within the meaning of Section 8, Subdivision (1) of the National Labor Relations Act.

7. Respondent denies each and all of the allegations contained in Paragraph 8 of the complaint, and avers that:

(a) On February 17, 1937, certain employees of the respondent, acting at the instigation of, and in pursuance of a conspiracy with, the Steel Union and certain of its agents and organizers, with force and violence evicted the officers, agents and other employees of the respondent from its plant at North Chicago, Illinois, and with force and violence seized and barricaded themselves in two key buildings forming part of such plant. Thereupon, the respondent, acting through its duly authorized officers and agents, demanded of such persons that they forthwith relinquish possession of the respondent's property and leave the plant, which request was refused by said persons who remained behind locked doors in said buildings and refused admittance thereto to the respondent's duly authorized officers and agents. Upon the refusal of such employees who had so seized and retained possession of the two

buildings, as aforesaid, to vacate the buildings as directed by the respondent and to permit the respondent's officers and agents to enter therein, the respondent announced, on the evening of February 17, 1937, approximately four hours following such violent seizure, that all employees thus holding the unauthorized and unlawful possession of said buildings were discharged from their employment with the respondent.
105 Said discharge was made only after, and solely by reason of, the aforementioned violence and violent and unlawful seizure and retention of the two key buildings of respondent's plant, and for no other reason whatsoever.

(b) Respondent denies that on February 17, 1937, or on any other date, it discharged any of the persons named in Paragraph 8 of the complaint, or any other persons, by reason of membership in the Steel Union or in any other union or by reason of lawful concerted activities for the purpose of collective bargaining or by reason of lawful concerted activities for other mutual aid and protection. Respondent further avers that the only persons named in Paragraph 8 of the complaint who were discharged by the respondent were those who had participated in the violent seizure and unlawful retention of possession of respondent's property, as hereinbefore set forth, and who were discharged, as hereinbefore set forth, solely by reason of such violence and unlawful conduct and for no other reason whatsoever.

(c) Respondent avers that Jasper Leskovec was temporarily laid off and worked last for the respondent on November 25, 1936, and was finally discharged for inefficiency, and for no other reason, on January 26, 1937.

8. Respondent denies each and all of the allegations contained in Paragraph 9 of the complaint. Respondent specifically denies that W. D. Crump, referred to in said paragraph, was at any time discharged by the respondent; respondent avers that since February 17, 1937, said Crump has voluntarily absented himself from the plant and employ of the
106 respondent. Respondent avers that Art Holm, Sr. was discharged by the respondent as one of its foremen by reason of insubordination, inefficiency and the commission of acts contrary to his authority and instructions, and said Holm was at no time suspected of membership in the Steel Union. Respondent further avers that it understood and believed at the time of said discharge that foremen were not eligible for membership in the Steel Union, and the discharge of said Art Holm, Sr. was not made in the belief or suspicion that said

Holm was either a member of, or in any way connected with, the Steel Union.

9. Respondent denies each and all of the allegations and the conclusions of Paragraph 10 of the complaint, and specifically denies that it discriminated against any of its employees, or discharged any of its employees by reason of, or that it discouraged, membership in the Steel Union, or in any other union activity, and further denies that it has in any way engaged in any unfair labor practices within the meaning of Section 8, Subdivision (3) of the National Labor Relations Act.

10. Respondent denies each and all of the allegations of paragraph 11 of the complaint, and specifically denies that either on February 27, 1937, or at any other time, the respondent refused or failed to reinstate to their regular positions of employment any of its employees or former employees, whether or not named in Paragraph 11 of the complaint, for the reason of their membership in the Steel Union or that they engaged in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. Respondent further avers that:

107 (a) On February 18, 1937, respondent presented its complaint to the Circuit Court of Lake County, Ilinois, setting out the seizure and retention of possession, by force and violence, of the aforementioned two buildings of respondent's plant by certain employees of respondent acting at the instigation of, and in conspiracy with, the Steel Union and its officers, agents and organizers, and prayed that appropriate injunctional relief might be granted to restore said property to the possession of the respondent as its lawful owner. Upon such complaint and pursuant to due notice and upon full hearing, said Circuit Court of Lake County, Illinois, did, on February 18, 1937, enter a temporary injunction requiring that individual defendants (substantially all of whom are named in Paragraphs 8 and 11 of the complaint) and the Steel Union and its members and agents, cease and desist from occupying or possessing any portion of the plant or properties of the respondent and vacate and remove from such premises at once and otherwise cease and refrain from unlawfully interfering with the respondent's possession of its plant and property and the regular conduct of respondent's business. Upon service of the writ of injunction issued pursuant to such order, said discharged employees, still acting under the direction and in conspiracy with the Steel Union, refused to comply with the court writ and defied the law enforcement officers of

the County. Thereafter, a writ of attachment duly issued from the Circuit Court of Lake County, Illinois, directing that the Sheriff of said county arrest the persons named therein and all other persons so unlawfully retaining possession of respondent's property, and bring them before the Bar of said Circuit Court to show cause, if any they had, why they
108 should not be punished for contempt of that court in failing to comply with its writ of injunction. On February 19, 1937, the duly constituted Sheriff of Lake County, Illinois, endeavored to execute and enforce said attachment writ and was prevented from so doing by the resistance, with force and violence, by the persons so unlawfully occupying the premises of the respondent. Such persons continued to retain unlawfully and with force and violence possession of respondent's plant buildings until the morning of February 26, 1937, when they were evicted from the premises by the Sheriff of Lake County, Illinois, while executing the aforementioned writ of injunction and writ of attachment. On the last mentioned date, the persons so unlawfully occupying the premises of the respondent, and other members and agents of, and sympathizers with, the Steel Union, acting in concert and conspiracy with the Steel Union, resisted and interferred with, by force and violence, the enforcement of said writs of injunction and attachment by the Sheriff of Lake County. All of the persons named in Paragraph 11 of the complaint (other than those specifically hereinafter referred to in Subdivisions (b), (d) and (e) of this Paragraph 10 of this answer) actively participated in the aforementioned violent and unlawful seizure and retention of respondent's property, the defiance of the Circuit Court of Lake County, Illinois, and the resistance, by force and violence, to the Sheriff's execution of said writs of injunction and attachment, or actively aided and abetted such persons in such violence and unlawful conduct in pursuance of a single purpose and conspiracy. By reason of their participation in the aforementioned violence and unlawful conduct, and by reason of the abolition of certain jobs in re-
109 spondent's plant, but for no other reason whatsoever, respondent did not, upon the restoration of its plant on February 26, 1937, offer to reinstate or reemploy the following persons:

Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Edward Brunke, Al Bunton, Jerome Camernick, Jr., Ted Christiansen, Joseph Chudy, Lester Crump, W. D. Crump, John Cudith, Jr., Leo P. Daluga, Vincent Dietmeyer,

Harold Dreyer, Raymond DuBois, Thomas E. Fagan, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, Phil Graimer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Joseph Hoff, Art Holm, Jr., John W. Jackoway, Oscar Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joe Lima, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovec, Nate Mogel, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis, John Praski, Merritt Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry H. Rayner, Joseph Richveis, Andrew Rode, Arvo Rommppaine, Alvar Rommppaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Luther Small, John Starovich, Carl A. Swanson, Jack Taylor, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yaeger, Frank Zelenick and Mike Zelenick.

(b) Respondent further avers that it affirmatively requested the following persons named in Paragraph 11 of the complaint to return to work and resume their duties and that they refused so to do:

Robert Brown, Gus Canelakes, Clarence Dreyer, Herman Latz, Otto Latz, Eric Lindberg, George Mondro, Frank Moxey, Isabelle Recktenwald, Robert Pratt, Edward Schuman, Peter Skarbalus and George W. Smith.

(c) Respondent further avers that upon the resumption of operations on or about February 27, 1937, the respondent did, for purposes of efficiency and economy of operation, abolish forty-three positions, among which were positions which had previously been occupied by a number of the persons named in Paragraph 11 of the complaint, and the elimination of such positions, together with the participation of the persons formerly employed in such positions in the aforementioned violence and unlawful conduct, were the sole reasons for failing to offer reinstatement or reemployment to such persons.

(d) The following persons named in Paragraph 11 of the complaint were not rehired or reinstated upon resumption of operations of the respondent solely and exclusively by reason of their inefficiency to perform the duties required of such employees in respondent's employment:

Joan Bissonnette, Virginia Butterfield, Frances Fellens, Fern Gartley, Evelyn Gramer, Vivienne Johnson, Elizabeth Luczo, Tillie Mesec and Marguerite Siefert.

(e) Jasper Leskovec and Art Holm, Sr. were properly discharged for cause, as hereinbefore set forth, and respondent was under no duty to reinstate or reemploy such persons.

Respondent avers that its failure to rehire or reinstate any employees or former employees was in no respect motivated by their membership in the Steel Union or in any other union or their participation in lawful concerted efforts for the purpose of collective bargaining or other mutual aid or protection or by reason of any other lawful conduct.

11. Respondent denies each and all of the allegations and conclusions of Paragraph 12 of the complaint.

12. Respondent denies each and all of the allegations of Paragraph 13 of the complaint.

(a) Respondent specifically denies that it at any time attempted to organize a company union, whether as set out
111 in Paragraph 13 of the complaint or otherwise, and further denies that it at any time threatened any of its employees with loss of employment for failure to join in such union.

(b) Respondent avers that Rare Metal Workers of America, Local No. 1 (herein called "Rare Metal Union") is a bona fide labor organization organized and existing under the corporation laws of the State of Illinois, and that respondent has had no connection in any way with its organization, conduct or maintenance. Respondent specifically denies (1) that it caused Rare Metal Union to be organized, (2) that it dominated or interfered with the formation of, or solicitation of members for, the Rare Metal Union, and (3) that it threatened any employees with loss of employment or other penalty for failure to join the Rare Metal Union or that it contributed any financial or other support to the Rare Metal Union.

(c) Respondent denies that it engaged in any acts whether as set forth in Paragraph 13 of the complaint or otherwise, for the intent or purpose, or having the effect, of restraining, coercing or interfering with the exercise by any of its employees of rights guaranteed by Section 7 of the National Labor Relations Act, or that it engaged in any unfair labor practices within the meaning of Section 8, Subdivision (2) of that act.

13. Respondent denies each and all of the allegations of Paragraph 14 of the complaint. Respondent avers that the normal operations and business of the respondent were
112 interfered with and prevented solely by the violent and

unlawful seizure of its property, as hereinbefore recited, and further avers that such violent and unlawful seizure and retention of respondent's property was effected at the instigation of the Steel Union for the purpose of forcibly compelling the respondent to enter into a closed shop-check-off system agreement with the Steel Union so as to require every employee of the respondent, as a condition of such employment, to become a member of, and to pay dues to, the Steel Union, and require the respondent to deduct such dues from the wages of such employees and transmit the same to the Steel Union.

14. Respondent denies each and all of the allegations and conclusions contained in Paragraph 15 of the complaint. Respondent denies that it committed any of the acts or engaged in any of the practices alleged in Paragraph 15 of the complaint, and further denies that it engaged in unfair labor practices within the meaning of Section 8, Subdivision (1) of said National Labor Relations Act.

15. Respondent denies each and all of the allegations and conclusions of Paragraphs 16 and 17 of the complaint.

16. Respondent avers that the Steel Union and its members and officers have endeavored for more than two months past to hinder, delay and interfere with the disposition of the aforementioned proceedings before the Circuit Court of Lake County, Ilinois, wherein contempt citations against most of the persons named in Paragraphs 8 and 11 of the complaint, and against others, are now pending, and wherein an application for a permanent injunction is now pending, and respondent avers that the charges upon which the complaint in this proceeding is based were not filed in good faith but
113 are part and parcel of the efforts of the Steel Union to hinder, delay and interfere with the aforementioned court proceedings.

17. Respondent specifically denies each and all of the allegations of the complaint which are not in this answer specifically and expressly admitted.

Wherefore, respondent prays that the complaint in the above entitled proceeding may be dismissed.

Fansteel Metallurgical Corporation,
By R. J. Aitchison,
President.

Levinson, Becker, Peebles & Swiren,
Counsel for respondent.

State of Illinois }
County of Lake } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled proceedings; that in accordance with his due authority so to do, he has executed the above and foregoing answer for and in the name of Fansteel Metallurgical Corporation; that all of the matters and things set out in the above and foregoing answer are true in substance and in fact, except such matters as are alleged to be on information and belief and as to such matters affiant is informed and verily believes the allegations to be true.

R. J. Aitchison.

Sworn to and Subscribed Before Me this 2nd day of June, A. D. 1937.

Nona B. Long,
Notary Public.

(Seal)

135 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

AMENDMENT TO ANSWER OF FANSTEEL METALLURGICAL CORPORATION.

(Board Exhibit 1-Q.)

By leave of the Trial Examiner first had and obtained, the respondent, Fansteel Metallurgical Corporation, does hereby amend its answer filed in the above entitled cause by striking out paragraph 10 thereof and inserting in lieu of said paragraph the following:

Respondent denies each and all of the allegations of paragraph 11 of the complaint, and specifically denies that either on February 27, 1937, or at any other time, the respondent refused or failed to reinstate to their regular positions of employment any of its employees or former employees, whether or not named in paragraph 11 of the complaint, for the reason of their membership in the Steel Union or that they engaged in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. Respondent further avers that:

(a) On February 18, 1937, respondent presented its complaint to the Circuit Court of Lake County, Illinois, setting out the seizure and retention of possession, by force and violence, of the aforementioned two buildings of respondent's plant by certain employees of respondent acting at the instigation of, and in conspiracy with, the Steel Union and its officers, agents and organizers, and prayed that appro-
136 priate injunctional relief might be granted to restore said property to the possession of the respondent as its lawful owner. Upon such complaint and pursuant to due notice and upon full hearing, said Circuit Court of Lake County, Illinois, did, on February 18, 1937, enter a temporary injunction requiring that individual defendants (substantially all of whom are named in paragraphs 8 and 11 of the complaint) and the Steel Union and its members and agents, cease and desist from occupying or possessing any portion of the plant or properties of the respondent and vacate and remove from such premises at once and otherwise cease and refrain from unlawfully interfering with the respondent's possession of its plant and property and the regular conduct of respondent's business. Upon service of the writ of injunction issued pursuant to such order, said discharged employees, still acting under the direction and in conspiracy with the Steel Union, refused to comply with the court writ and defined the law enforcement officers of the County. Thereafter, a writ of attachment duly issued from the Circuit Court of Lake County, Illinois, directing that the Sheriff of said county arrest the persons named therein and all other persons so unlawfully retaining possession of respondent's property, and bring them before the Bar of said Circuit Court to show cause, if any they had, why they should not be punished for contempt of that court in failing to comply with its writ of injunction. On February 19, 1937, the duly constituted Sheriff of Lake County, Illinois, endeavored to execute and enforce said attachment writ and was prevented from so doing by the resistance, with force and violence, by the persons so unlawfully occupying the premises of the respondent. Such persons continued to retain unlawfully and with force and violence possession of respondent's plant buildings until the morning of February 26, 1937, when they were evicted from the premises by the Sheriff of Lake County, Illinois, while
137 executing the aforementioned writ of injunction and writ of attachment. On the last mentioned date, the persons so unlawfully occupying the premises of the respondent, and

other members and agents of, and sympathizers with, the Steel Union, acting in concert and conspiracy with the Steel Union, resisted and interfered with, by force and violence, the enforcement of said writs of injunction and attachment by the Sheriff of Lake County. All of the persons named in paragraph 11 of the complaint (other than the women and those specifically hereinafter referred to in Subdivisions (d) and (e) of this paragraph 10 of this amendment) actively participated in the aforementioned violent and unlawful seizure and retention of respondent's property, the defiance of the Circuit Court of Lake County, Illinois, and the resistance, by force and violence, to the Sheriff's execution of said writs of injunction and attachment, or actively aided and abetted such persons in such violence and unlawful conduct in pursuance of a single purpose and conspiracy. By reason of their participation in the aforementioned violence and unlawful conduct, by reason of their discharge for proper cause, and by reason of the abolition of certain jobs in the respondent's plant, respondent was not required upon the restoration of its plant on February 26, 1937 to offer to reinstate or reemploy the following persons:

Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Edward Brunke, Al Bunton, Jerome Camernick, Jr., Ted Christianson, Joseph Chudy, Lester Crump, W. D. Crump, John Cudith, Jr., Leo P. Daluga, Vincent Dietmeyer, Harold Dreyer, Raymond DuBois, Thomas E. Fagan, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, Phil Graimer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Art Holm, Jr., John W. Jackoway, Oscar Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joe Lima, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovac, Nate Mogel, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis, John Praski, Merritt Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry
138 H. Rayner, Joseph Richveis, Andrew Rode, Arvo Rommppaine, Alvar Rommppaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Luther Small, John Starovich, Carl A. Swanson, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yeager, Frank Zelenick and Mike Zelenick.

(b) Respondent further avers that it affirmatively requested the following persons named in paragraph 11 of the

complaint to return to work and resume their duties and that they refused so to do:

Roy Brown, Gus Canelakes, Clarence Dreyer, Herman Latz, Otto Latz, Eric Lindberg, George Mondro, Frank Moxey, Isabelle Recktenwald, Robert Pratt, Edward Schuman, Peter Skarbalus, George W. Smith, Arvo Rommppaine, Luther Small, Paul Wells, John W. Jackoway, Evelyn Graimer, Fern Gartley, Vivienne Johnson, Marguerite Seifert, Tillie Mesec.

(c) Respondent further avers that upon the resumption of operations on or about February 27, 1937, the respondent did, for purposes of efficiency and economy of operation, abolish forty-three positions, among which were positions which had previously been occupied by a number of persons named in paragraph 11 of the complaint, and the elimination of such positions, together with the participation of the persons formerly employed in such positions in the aforementioned violence and unlawful conduct, were the sole reasons for failing to offer reinstatement or reemployment to such persons.

(d) The respondent was not obligated to rehire or reinstate the following persons named in paragraph 11 of the complaint by reason of their inefficiency to perform the duties required of such employees in respondent's employment:

Joan Bissonnette, Virginia Butterfield, Frances Fellens, Fern Gartley, Evelyn Graimer, Vivienne Johnson, Elizabeth Luczo, Tillie Mesec, Marguerite Seifert, and Joseph Hoff.

139 (e) Jasper Leskovec and Art Holm, Sr. were properly discharged for cause, as hereinbefore set forth, and respondent was under no duty to reinstate or reemploy such persons.

Jack Taylor was a temporary part time employee whose services were not required after the restoration and possession of the plant to the respondent, and he was not reemployed solely for that reason.

Respondent avers that its failure to rehire or reinstate any employees or former employees was in no respect motivated by their membership in the Steel Union or in any other union or their participation in lawful concerted efforts for the purpose of collective bargaining or other mutual aid or protection or by reason of any other lawful conduct.

Fansteel Metallurgical Corporation,
By R. J. Aitchison,
President.

Levinson Becker Peebles & Swiren,
Counsel for respondent.

State of Illinois }
County of Lake. } ss.

R. J. Aitchison, being first duly sworn on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled proceedings; that in accordance with his due authority so to do, he has executed the above and foregoing amendment for and in the name of Fansteel Metallurgical Corporation; that all of the matters and things set out in the above and foregoing amendment
140 are true in substance and in fact, except such matters as are alleged to be on information and belief and as to such matters affiant is informed and verily believes the allegations to be true.

R. J. Aitchison.

Sworn to and Subscribed Before me this 22nd day of June, 1937.

Nora B. Long,
(Seal) *Notary Public.*

115 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

APPLICATION FOR SUBPOENAS AND SUBPOENA DUCES TECUM.

(Board Exhibit 1-G.)

To: Leonard C. Bajork,
Acting Regional Director of
the Thirteenth Region,
Chicago, Illinois.

Hearing upon the complaint in the above entitled proceeding has heretofore been set by the National Labor Relations Board to be held on the 7th day of June, 1937, at ten o'clock in the forenoon, Central Daylight Saving Time, at Room 4, New United States Post Office Building, Waukegan, Illinois. Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, hereby makes application for subpoenas for the attendance of witnesses at said hearing, and a subpoena duces tecum for the production of books, records,

correspondence and other documents at said hearing, as follows:

(1) Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Joan Bissonnette, Roy Brown, Edward Brunke, Al Bunton, Virginia Butterfield, Jerome Camernick, Jr., Gus Canelakes, Ted Christiansen, Joseph Chudy, Lester Crump, W. D. Crumb, John Cudith, Jr., Leo P. Daluga, Vincent
116 Dietmeyer, Clarence Dreyer, Harold Dreyer, Raymond Dubois, Thomas E. Fagan, Frances Fellens, Charles E. Fulkerson, Sr., Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, Fern Gartley, Phil Graimer, Evelyn Gramer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Joseph Hoff, Art Holm, Sr., Art Holm, Jr., John W. Jackoway, Oscar Johnson, Vivienne Johnson, George Kallio, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Herman Latz, Otto Latz, Jasper Leskovec, Joe Lima, Eric Lindberg, Elizabeth Luczo, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovec, Tillie Mesec, Nate Mogel, George Mondro, Frank Moxey, Frank Musech, Antone Nagode, David Nostell, Theodore Ohlson, Elsworth Peters, Joseph Petraitis, John Praski, Merritt Pratt, Robert Pratt, Bartol Puntarich (erroneously designated in complaint as "Bartol Prutovey"), Harry H. Rayner, Isabelle Recktenwald, Joseph Richveis, Andrew Rode, Arvo Rommppaine, Alvar Rommppaine, Ed Ruck, Frank Scheuer (erroneously designated in complaint as "Sonny Shure"), Edward Schuman, Marguerite Siefert, Peter Skarbalus, Luther Small, George W. Smith, John Starovich, Carl A. Swanson, Jack Taylor, Charles Warner, Victor Weatherhead, Paul Wells, Allen White, Fred Yaeger, Frank Zelenick and Mike Zelenick.

The facts to be proven by such witnesses include (1) their activities prior to, and the circumstances surrounding, their failure to return to work at the plant of respondent, and the alleged discharge of each of them; (2) the seizure and retention by force and violence of respondent's plant, the defiance of the court orders of the Circuit Court of Lake County, Illinois, and the resistance to the Sheriff of Lake County, Illinois, in the execution of writs of injunction and attachment, all as set out in respondent's answer in these proceedings; and (3) the identity of the persons participating in such violence, court definance and resistance to law enforcement officers.

(2) Andrew Bereczsky, Louis Bereczsky, Howard Bond, Wallace Bourdeau, Wilbert Braden, George Cerk, George Devine, John Germer, Ray Grossenheider, Gilbert Haney, Al-

bert Henning, Ralph Hoffman, Chester Hook, Stanley
117 Janas, Chester Janas, Eino Johnson, Fred Karpinski,
Frank Ludlow, Frank Nicholey, Frank Osenek, Casmir Petkus, John Plewa, Frank Ptak, Reginald Ross, Eric Schultz, Alf Simonson, Arthur Sladek, Milton Sladek, Orlin Swanson, Oscar Westerlund, Charles Smith, William Van Treek, Stanley Verenski, Cornelius Dugan and Victor Oliver.

The facts to be proven by such witnesses include the seizure and retention by force and violence of respondent's plant, the defiance of the court orders of the Circuit Court of Lake County, Illinois, the resistance to the Sheriff of Lake County, Illinois, in the execution of writs of injunction and attachment, all as set out in respondent's answer in these proceedings, and the identity of the persons participating in such violence, court defiance and resistance to law enforcement officers.

(3) Robert E. Pilkington.

The facts to be proven by said witness include the forcible retention of possession of buildings forming part of respondent's plant by a group of persons, including a number of the former employees of respondent listed in paragraphs 8 and 11 of the complaint, all as set out in respondent's answer in these proceedings, and other violence and threatened violence accompanying the alleged strike mentioned in the complaint.

(4) Subpoenas duces tecum directed to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, requiring the production at said hearing of all its minute records, books of account, check books, membership cards, books and lists, and all correspondence relat-
ing to the solicitation of members among employees of
118 the respondent or relating to the participation of said
Lodge 66 or any of its officers, members or agents in the seizure on February 17, 1937, of Buildings 3 and 5 of respondent's plant and the retention thereof or maintenance of persons in occupancy of said buildings until February 26, 1937. The facts to be established by such evidence include (a) the names and total number of employees of respondent who at any of the times mentioned in the complaint held membership in said Lodge 66, and the status of such members from time to time from September 10, 1936, to the date hereof; (b) the nature and extent of the financing and the identity of the participants in the conspiracy to seize and retain part of the plant of the respondent, and otherwise to engage in violence,

which conspiracy is more fully referred to in respondent's answer; and (c) the employment or designation of persons engaged in violence against the respondent and employees of the respondent refusing to accept membership in said Local 66.

Reference is hereby made to the answer filed in these proceedings by the respondent, for the materiality of the above evidence.

Fansteel Metallurgical Corporation,
By R. J. Aitchison,
President.

Levinson Becker Peebles & Swiren
Counsel for respondent.

119 State of Illinois, } ss.
County of Lake. }

R. J. Aitchison, being first duly sworn, on oath deposes and says that he is the President of Fansteel Metallurgical Corporation, respondent in the above entitled cause, and has executed the above application on its behalf; that the above and foregoing witnesses and evidence are necessary for the due presentation of the defense of the respondent and that the facts to be established by such witnesses and evidence are accurately and truly set out above.

R. J. Aitchison.

Sworn to and Subscribed Before Me this 3d day of June, A. D. 1937.

Nora B. Long,
Notary Public.

(Seal)

121 (Board Exhibit 1-H.)

UNITED STATES OF AMERICA.

NATIONAL LABOR RELATIONS BOARD.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner In the Matter of Fansteel Metallurgical Company and Local 66 of Amalgamated Association of Iron, Steel and Tin Workers of North America, Case No. XIII-C-80.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 4th day of June, A. D. 1937, at Washington, D. C.

Benedict Wolf
Secretary.

(Seal)

122 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 3rd day of June, 1937.

Present:

Donald Wakefield Smith.
Edwin S. Smith.

* * (Caption—XIII-C-80) * *

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Thirteenth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Tilford E. Dudley act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf
Benedict Wolf
Secretary.

129 (Board Exhibit 1-O.)

UNITED STATES OF AMERICA.

NATIONAL LABOR RELATIONS BOARD.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Denying Application for Subpoenas and Subpoena Duces Tecum In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, Case No. XIII-C-80.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 11th day of June, A. D. 1937, at Washington, D. C.

Benedict Wolf
Secretary.

(Seal)

130 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 10th day of June, 1937.

Present:

Edwin S. Smith.
Donald Wakefield Smith.

• • (Caption—XIII-C-80) • •

ORDER DENYING APPLICATION FOR SUBPOENAS AND SUBPOENA DUCES TECUM.

A hearing having been commenced in this matter, and application for subpoenas and subpoena duces tecum having been duly filed by the respondent, and the Board having considered the matter, and it appearing to the Board that many of the matters desired to be proven by the witnesses sought

to be subpoenaed will be offered in evidence as part of the complainants affirmative case,

It Is Hereby Ordered that said application for subpoenas and subpoena duces tecum be and hereby is denied without prejudice to the respondent's right to renew said application upon completion of the complainants affirmative case.

By direction of the Board:

Benedict Wolf,
Benedict Wolf,
Secretary.

131 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

RENEWAL OF APPLICATION FOR SUBPOENAS AND SUBPOENAS DUCES TECUM.

(Board Exhibit 1-P.)

To the National Labor Relations Board:

Now comes Fansteel Metallurgical Corporation, respondent in the above entitled proceeding, and renews its application for the following subpoenas and subpoenas duces tecum to be issued forthwith:

1. Subpoena directed to Robert E. Pilkington;

2. Subpoena duces tecum to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America requiring the production at the hearing in this cause of all of its minute records, books of account, check books, membership cards, membership books and lists, and all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937;

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3. Subpoena duces tecum to Carl Swanson, Secretary of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America requiring the production at the hearing in this cause of all of its minute records, books of account, check books, membership cards, membership books

and lists, and all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937; and also all copies of the charters, by-laws, articles of association, rules of eligibility, and any and all other rules and regulations governing the organization and conduct of said Lodge 66.

The purpose of the testimony of Robert E. Pilkington is to establish threats of violence against the respondent and its officers made by certain of the persons named in paragraphs 8 and 11 of the complaint.

The purposes of the evidence sought to be obtained by the foregoing subpoenas duces tecum are:

(a) To refute the charges of the complaint in this proceeding that said Lodge 66, at the times specified in the complaint, represented or was authorized to act for a majority of the production and maintenance employees of the respondent;

(b) To prove whether or not the violent seizure and retention of respondent's plant was a common enterprize of all of the members of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and
133 financed and directed by said Lodge on behalf of all of its members; and

(c) To refute the testimony of witnesses heretofore called by the Board with respect to the eligibility rules of said Lodge 66, its organization and existence as an alleged labor organization, and other matters heretofore brought in issue by the complaint and answer.

The only evidence adduced by the Board with reference to the membership of Lodge 66 on the several dates mentioned in the complaint, is a group of cards purporting to be applications for membership, unidentified by anyone, and an offhand estimate by one of the members based entirely on its members. Similarly there were no records produced with respect to the eligibility rules of the Lodge and the testimony of Lodge officers showed a variance in their understanding of those eligibility rules.

The renewal of application for subpoenas is filed without waiver of the objections and exceptions heretofore made to

the refusal of the Board to issue the subpoenas requested by the respondent and the overruling by the Trial Examiner in the hearing for such subpoenas.

Fansteel Metallurgical Corporation
By R. J. Aitchison
President.

Levinson Becker Peebles & Swiren
Counsel for Respondents.

134 (Endorsed) Before the National Labor Relations Board * * (Caption—XIII-C-80) * * Renewal of Application for Subpoenas and Subpoenas Duces Tecum Delivered to the Trial Examiner at 5:30 P. M. on 6/23/37 by respondents attorneys FB Law Offices Levinson Becker Peebles & Swiren One N La Salle St. Central 8130 Chicago.

147 (Board Exhibit 1-V.)

UNITED STATES OF AMERICA.

National Labor Relations Board.

SUBPOENA DUCES TECUM.

To Carl A. Swanson, Financial Secretary
Waukegan, Illinois.

You are hereby required to appear before a trial examiner of the National Labor Relations Board, at New Post Office Building in the City of Waukegan, Illinois on the 25th day of June, 1937, at 4 o'clock P. M. of that day, to testify in the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron Steel and Tin Workers of North America, Lodge 66.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

Membership lists, membership card and membership books.

Fail not at your peril.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Washington, D. C. this 25th day of June, 1937.

J. Warren Madden.

149 (Board Exhibit 1-W.)

UNITED STATES OF AMERICA.

NATIONAL LABOR RELATIONS BOARD.

SUBPOENA.

To Robert Pilkington
United States Dept. of Labor, Chicago, Illinois.

You are hereby required to appear before a Trial Examiner of the National Labor Relations Board, at New Post Office Building in the City of Waukegan, Illinois on the 25th day of June, 1937, at 4 o'clock P. M. of that day, to testify in the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron Steel and Tin Workers of North America, Lodge 66.

Fail not at your peril.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Washington, D. C. this 25th day of June, 1937.

(Seal) Edwin S. Smith.

2995 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board held at its offices at 1010 Vermont Avenue, N. W., Washington, D. C., on the 25th day of June, 1937.

Present:

J. Warren Madden, Chairman.
Edwin S. Smith.
Donald Wakefield Smith.

* * (Caption—XIII-C-80) * *

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION OF FANSTEEL METALLURGICAL CORPORATION FOR SUBPOENAS AND SUBPOENAS DUCES TECUM.

Whereas, on June 3, 1937, during the pendency of hearings in the above-entitled matter, Fansteel Metallurgical Corporation made application for an order for subpoenas and subpoenas duces tecum, which application was, on June 10, 1937, denied without prejudice to renewal upon completion of the affirmative case of the National Labor Relations Board; and

Whereas, on June 23, 1937, said Fansteel Metallurgical Corporation, renewed its application for certain subpoenas and subpoenas duces tecum;

Now, Therefore, the National Labor Relations Board, being sufficiently advised in the premises and acting pursuant to Section 21 of the Rules and Regulations of the National Labor Relations Board—Series 1, as amended, effective April 28, 1936, it is hereby

2996 Ordered

(a) That so much of said renewed application be granted as is contained in paragraph numbered "1" thereof, namely, that a subpoena be issued, directly to Robert E. Pilkington;

(b) That paragraph numbered "2" of said renewal application be granted in part and denied in part, namely, that a subpoena duces tecum be issued, directed to the Amal-

gamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, requiring it to produce its membership cards, membership books and lists, but that application for a subpoena duces tecum requiring the production by said Lodge 66 of its minute records, books of account and check books and "all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937" be and is hereby denied;

(c) That paragraph numbered "3" of said renewal application be granted in part and denied in part, namely, that a subpoena duces tecum be issued, directed to Carl Swanson, Secretary of said Lodge 66, requiring him to produce the membership cards, membership books and lists of said Lodge 66, but that application for a subpoena duces tecum directing said Carl Swanson to produce the minute records, books of account and check books of said Lodge 66 and "all correspondence relating to the solicitation of members among employees of the respondent, or relating to the participation of said Lodge 66, or any of its officers, members, or agents of the seizure on February 17, 1937 of Buildings 3 and 5 of respondent's plant, and the retention thereof, or maintenance of persons in occupancy of said buildings until February 26, 1937" and "all copies of the charters, by-laws, articles
2997 of association, rules of eligibility, and any and all other rules and regulations governing the organization and conduct of said Lodge 66" be and is hereby denied.

By direction of the National Labor Relations Board:

Benedict Wolf,
Secretary.

473 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Room 4, New U. S. Post Office Building,
Waukegan, Illinois,
Monday, June 7th, 1937.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by Max Swiren; and Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois, on behalf of Fansteel Metallurgical Corporation.

474 PROCEEDINGS.

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, at the opening of the Board's case, I desire first to introduce Board's Exhibit No. 1. This exhibit will consist of the several papers following, and I suggest that they be further identified as follows: 1-A, the complaint, amended charge, copy of the rules and regulations, and acknowledgment of service by the respondent. No. 1-B, the registered return reciting the service of the complaint upon the union. No. 1-C, motion for extension of time to file answer, and to continue the cause. No. 1-D, affidavit in support of such motion. No. 1-E, order of Regional Director denying the motion. No. 1-F, the answer. No. 1-G, application for subpoenaes, and subpoenaes duces tecum. No. 1-H will be the order designating the Trial Examiner, which order I have not yet received.

Mr. Swiren: You say there is no order here designating the Trial Examiner?

Mr. Walsh: I have not yet received it.

Mr. Swiren: Does the Examiner have it?

Trial Examiner Dudley: No. The designation is normally sent to the Regional Director, in the first instance.

Mr. Walsh: Does counsel care to examine the papers?

Mr. Swiren: No. I assume that you characterized them correctly.

475 Mr. Walsh: I offer them in evidence.

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: Yes. If the Examiner please, I desire at this time, at the outset, before any proceedings go forward, to present again my motion for the adjournment of this cause. If the Examiner is ready to receive the motion—

Trial Examiner Dudley: Before you go into that: is there any objection to the reception of these documents in evidence?

Mr. Swiren: Yes, I object to any proceeding at this time; I object to any proceedings going forward at this time, and ask that the proceedings be adjourned, for the following reasons:

On June 2nd, as set out in our affidavit, the proceedings before the Circuit Court of Lake County began in the case of Fansteel Metallurgical Corporation versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and certain individuals; being Cause No. 37551.

That proceeding was originally commenced by the Fansteel Metallurgical Corporation against the union which filed the charge upon which the complaint in the case at bar is based, and against certain individuals, to compel them to remove from the premises of the respondent which they had illegally and with violence occupied in a socalled sit-

476 down strike on the 17th of February.

In the course of those proceedings, first a temporary injunction was entered, requiring the defendants, including this union and the individual defendants, to vacate and deliver over the premises which they had so illegally seized. That injunctional order was not complied with, and there was a writ of attachment thereupon issued against the individuals and all others occupying the premises, to show cause if any they had why they should not be held in contempt of the Circuit Court of Lake County. Upon service of that attachment order, the parties in the plant declined to comply;

and thereupon the sheriff endeavored to execute the writ, and was resisted by violence by those men.

Subsequently, a week later, he succeeded in executing that writ, but only again after both resistance and violence on the part of those men so illegally occupying the plant.

On June 2nd, pursuant to setting two weeks prior to that time, there was to be heard the contempt proceeding against some 90 or 95 men, including most of the people charged in paragraph 8 with having been discharged for membership in the union, and most of the people named in paragraph 11 of the complaint in this case, charged with having been refused reinstatement because of union membership.

There was also set for hearing at that time the application of the plaintiff, respondent in this case, for a permanent
477 injunction. Other matters had intervened, such as violence, and a supplemental complaint had been filed. When service of the complaint in this case was made on the 26th of May, this matter had already been set. I might say, it had been set a number of times before, and continued from time to time at the insistence of the union and its counsel.

Trial Examiner Dudley: By "this matter," you mean which matter?

Mr. Swiren: I am talking about the proceeding in the Circuit Court of Lake County.

Trial Examiner Dudley: Yes.

Mr. Swiren: It finally came up two weeks before June 2nd, and they then for the first time presented a petition for change of venue, which was promptly granted, despite the fact that the Court indicated it was not proper at that time; and we charged then that it was an activity for delay. The matter was then set down for definite hearing on June 2nd.

We set those facts up in the affidavit, and state, first, that the same counsel were engaged in that case; second, the company was engaged in that case as party plaintiff; third, that the witnesses, the principal witnesses required were engaged in that case,—and I might interrupt to say that I see a number of men here who are here in violation of the instructions and order of the Circuit Court of Lake County.

They are respondents in that case, and they were or-
478 dered to appear in court there; and they are appearing here in violation of the court order, and have subjected themselves to bond forfeiture and further contempt proceedings by appearing here.

We do not desire, as we pointed out in our motion, to in-

terfere with the orderly procedure there; and if we appear here, either as counsel, or by the officers of the corporation, it means that we will be disrupting and interfering with our case there.

That case proceeded to trial on June 2nd, and has been on trial continuously since that date. On Saturday counsel for the union—who is also representing the respondents there, in the contempt proceeding—announced that he would call approximately 85 or 90 witnesses,—or rather, that was on Friday. Since that time he has called 12 or 15 witnesses. There is no doubt but that we will continue in the contempt proceeding during the day, and probably tomorrow, and that the final decree proceedings will consume another day or two.

In view of the conflict, and the clear-cut prejudice that would result to the respondent, we feel that there is no question but what we are entitled to an adjournment of this proceeding until that case has been completed. Now, in view of the fact that that case required so many witnesses, we have been unable to adequately prepare this case, and ought to have at least a few days after that, in which to mke our preparation.

479 In addition to that, as an additional ground, we filed application on June 3rd for subpoenaes and subpoenaes duces tecum. None of those subpoenaes have been issued. They will require service on approximately 130 or 140 people, which necessarily will consume a considerable period of time; and we will be unduly prejudiced to go into the trial of this case without those subpoenaes.

I might say that I have never known of any proceeding before a court of law or a court of equity, or before any quasi-judicial tribunal, in which circumstances of that kind have not been promptly recognized as a basis, and a very proper basis, for an adjournment.

I might say, too, that a denial of this motion will deny to the respondent its constitutional right to due process. Obviously we cannot be granted due process if we are compelled to interfere with a pending case, and proceed here without the opportunity to subpoena witnesses, which is accorded to all the other parties.

Mr. Walsh: May it please the Examiner, as far as relates to the engagement of counsel in another case, I might state these facts, that the corporation here has as its counsel the firm of Levinson, Becker, Peebles & Swiren, of which Mr.

Swiren here is a partner. I am advised that that is a very large and very able law firm. They are engaged now in the trial of certain contempt proceedings in which they have
480 engaged local counsel to assist them; and, as I am advised, the local counsel and Mr. Swiren's associates have been conducting those proceedings. Mr. Swiren naturally, being one of counsel, desires to be present.

There is no desire upon the part of the Board to conflict in any way with that hearing over there, or in anywise interfere with the orderly process and procedure of the Circuit Court of Lake County. However, this litigation which is in progress over there at the present time, if what Mr. Swiren states is true, will drag out for some little time yet. I think, as a matter of the practical administration of the business of the court—

Mr. Swiren: It will be three or four or five days yet.

Mr. Walsh: Pardon me?

Mr. Swiren: Three or four or five days yet.

Mr. Walsh: All right. As a matter of the practical administration of the business of that court and this Board, sufficient adjustments in the attendance of the personnel at both places can be worked out between counsel.

Now, as to the violation of the injunction by my witnesses appearing here: I was not advised that they were so violating it.

Mr. Swiren: That is correct, Mr. Walsh.

Mr. Walsh: It is my understanding that this is a civil proceeding, a civil contempt proceeding, in the Circuit Court
481 of Lake County, involving the violation of an injunction, to which injunction these witnesses now present, are parties. I know of no law, either in Lake County, or otherwise, that would require the parties to be present in court if they do not so desire; so I do not believe that is a very serious infraction of any injunctional order, even though it be issued by the Circuit Court of Lake County.

Now, as to whether a denial of this motion would infringe upon the constitutional rights of the respondent as to due process, I might say that the law does not take into contemplation such conflict, as being a denial of due process. As a matter of fact, the respondent is here; the respondent has appeared before your Honor by its counsel; and it is amply prepared to proceed with the trial of this case.

I might go back so far as the time when the strike oc-

curred. From the very time that the strike occurred, Mr. Swiren personally, and in his professional capacity, has been closely and intimately connected with the activities both of his clients, and of the witnesses here. He knows who is here now, of the personnel. He knows all of the very many and intricate facts that are at issue before this Examiner. It is not as though he were called in lately and recently, to represent his client before this Board. As I say, since the 17th day of February, Mr. Swiren has practically lived with this lawsuit. There are no facts alleged in this complaint,
482 upon which I expect the Board to base an order, with which Mr. Swiren is not personally, intimately acquainted. So the plea for time for preparation is really throwing dust in the eyes of this Board.

Mr. Swiren: If the Examiner please, I would like to reply, if the Examiner will permit.

Trial Examiner Dudley: Perhaps we are getting our record unduly long here. I would like to get down to the meat of it as quickly as I can. Let me ask you a few questions first, Mr. Swiren.

Mr. Swiren: Yes.

Trial Examiner Dudley: We want to give all of the courtesies that are normally given to counsel who have several lawsuits on at one time, at the same time; and if there is a conflict as to where witnesses should be, why, we certainly should recognize that. Now, in regard to the availability of counsel: how many employees are there in your law firm?

Mr. Swiren: I think there are about thirteen, but I might say this, that no one but Mr. Keele and myself have known about this situation, and the very familiarity of which Mr. Walsh speaks, is what makes it very essential that I be present in court in this matter.

As a matter of fact also, we have other lawsuits. I have not tried to set up the lawsuits that are now pending, or now on trial, in which others are engaged.

483 Trial Examiner Dudley: How many employees of your firm are members of the bar?

Mr. Swiren: I am talking about members of the bar. No one practices law in our office unless he is a member of the bar.

Trial Examiner Dudley: Do you represent this company as general counsel in all of its matters?

Mr. Swiren: I have done this company's work as general counsel for the last ten years. I have been assisted from

time to time by Mr. Keele, and sometimes by Mr. Greenberg, who is now before the Bureau of Internal Revenue, on trial there.

Trial Examiner Dudley: You have known about the proceedings here I assume ever since their beginning?

Mr. Swiren: No. I have known about the complaint in this fashion: a week or so before the charges were filed, or rather before the complaint was issued, Mr. Walsh advised us that he was investigating the matter. We offered our assistance. He said he would not recommend a complaint unless after his investigation he found it worth while to do so. A few days before the complaint was issued, he advised us that he was forwarding a complaint to Washington. These charges are—

Trial Examiner Dudley: When did you first know of these proceedings?

484 Mr. Swiren: About the middle of May.

Trial Examiner Dudley: About the middle of May.

Mr. Swiren: Yes, sir.

Mr. Walsh: About the 9th or 10th of May, as I remember it.

Mr. Swiren: Well, I will say this, that Mr. Beman, former director, told us that there were some charges filed in connection with collective bargaining. We asked for those charges repeatedly, but were never given even the substance of them. We were advised that the Board was not free to make them available to us.

Trial Examiner Dudley: There were copies of the charge attached to the complaint served on you, were there not?

Mr. Swiren: Yes, sir; that is the complaint that was filed on May 21st.

Trial Examiner Dudley: Now, in regard to a possible conflict with the Circuit Court of Lake County, affecting witnesses: will you tell me what that is?

Mr. Swiren: Yes. These men are respondents to an attachment order. They were arrested, pursuant to the attachment order. They gave bond, and they were required under their bond to return to court at the opening of the hearing; and from time to time the court announced that the respondents were to remain in court during the hearing. Specifically, on Saturday, the court announced that. These

485 men are under bond to appear there, under a compliance order. They are not merely civil parties.

Trial Examiner Dudley: I take it that they appeared there when the court commenced its proceeding.

Mr. Swiren: Originally, and they were required to appear there Saturday, specifically; and several times during the hearing, in this way: "At the opening of court tomorrow morning, we want everybody here for the hearing tomorrow."

Trial Examiner Dudley: They are represented there by counsel?

Mr. Swiren: They are.

Trial Examiner Dudley: Then it is a case where they have been requested to appear as defendants before the court.

Mr. Swiren: Oh, no; they were arrested.

Trial Examiner Dudley: And are now represented by counsel.

Mr. Swiren: They were arrested, and required to be there personally. Their bodies were required to be attached, and brought before the court by the attachment order. If the Board is interested, I will read the order.

Trial Examiner Dudley: You may read it.

Mr. Swiren: "People of the State of Illinois"—

Trial Examiner Dudley: Read me just the substance of it.

Mr. Swiren: Yes.

486 Trial Examiner Dudley: Just the part to which you refer.

Mr. Swiren: "We command you"— this is addressed to the sheriff—"to take the following persons, to wit."

Trial Examiner Dudley: That is the original order.

Mr. Swiren: Yes.

Trial Examiner Dudley: Is there any order outside of the original order?

Mr. Swiren: Just the oral order directing that they be in court, because they are under bond to be there.

Trial Examiner Dudley: Do you want those people here as your witnesses?

Mr. Swiren: I do not want anybody here at this moment. I want an opportunity to go back to court, where I was this morning.

Trial Examiner Dudley: If the proceedings continue here, had you contemplated calling these people as your witnesses today?

Mr. Swiren: I had not contemplated calling them today, because I am defending this case.

Trial Examiner Dudley: Mr. Walsh, had you contemplated calling these people as witnesses today?

Mr. Walsh: There are certain witnesses here whom I will need during the day, I expect, depending somewhat, if the Examiner please, on the length of time it will take me to develop the technical part of the case from the records
487 which I have subpoenaed. I had not anticipated that I would get through with the technical phase of the case, before the end of this day, and perhaps not before tomorrow; depending entirely upon the length of the witnesses who are adduced.

Trial Examiner Dudley: Very well. I will make my ruling. First, the exhibits offered by the Board will be admitted into evidence.

(The documents referred to were received in evidence and marked collectively BOARD'S EXHIBIT NO. 1-A to H, both inclusive.)

Trial Examiner Dudley: Secondly, inasmuch as it seems to me that counsel for respondent have had ample time to prepare themselves for this hearing, and if they have been engaged in other litigation, they have nevertheless had the obligation to retain sufficient legal assistance to enable them to represent their client here; and third, inasmuch as the witnesses apparently are not going to be required, both in the other proceeding and in this proceeding, today; I will therefore rule that the motion for a continuance is disallowed.

Mr. Swiren: May I have this understood—

Trial Examiner Dudley: Just a moment. Now, if we find that any of the parties are needed in the other court, they will of course be free to go to the other court. If we find that the other court desires the presence of certain people
488 at the same time that this hearing desires their presence, we will attempt to arrange with those engaged in the other litigation, for times of hearing those witnesses that are mutually satisfactory.

I believe, then, that there will be no conflict between the two proceedings, either as to the presence of the personnel, or as to the presence of counsel.

Have you any further motions to offer at this time, Mr. Swiren?

Mr. Swiren: Yes. I now want to move that the Board refrain from hearing this matter, either directly, or through any agent or employee or agency of the Board, upon the

ground of undue prejudice on the part of the Board against the respondent in this case.

In that respect I think I ought to say that I have never known of a more consistent series of efforts to prejudice one party, on the part of the representatives of a quasi-judicial body, such as the National Labor Relations Board. In the first place when the original charge was filed, an agent of the Board undertook to act for the union which filed the charge in this case, in revising and rewriting a contract to be submitted to the respondent in this case on behalf of the union, notwithstanding the express provisions of the Act to the effect that the Board is not to engage in any activities of that character.

489 Trial Examiner Dudley: To what provision of the Act do you refer?

Mr. Swiren: I am referring to the provision of the Act which requires that the Board and its officials do not engage in mediation.

Trial Examiner Dudley: What section is that?

Mr. Swiren: May I use counsel's copy?

Mr. Walsh: Certainly.

Mr. Swiren: It is not a section; it is just a sentence; not a whole paragraph.

Trial Examiner Dudley: Beginning with Section 3 are the sections creating the Board.

Mr. Swiren: "Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor."

Trial Examiner Dudley: Where is that?

Mr. Swiren: Subdivision 3.

Trial Examiner Dudley: Which one?

Mr. Swiren: That is in Section 4.

Trial Examiner Dudley: The last sentence in paragraph (a)?

Mr. Swiren: That is right.

No. 2: Prior to the filing of this complaint we were requested by an attorney for the Board to reinstate men

490 who had been discharged for seizing, with violence and force, two buildings of the plant of this respondent; and when we declined to do so, this attorney advised us that the matter had been taken up with the Board, and they had already determined that it constituted a violation of the National Labor Relations Act.

Trial Examiner Dudley: Do you not believe, Mr. Swiren, that it would be best, if you are going to introduce facts to support your motion, that you introduce them in the form of testimony, rather than in the form of your own statements.

Mr. Swiren: I shall be very glad to testify.

Trial Examiner Dudley: You are arguing now.

Mr. Swiren: That was not the intention.

Trial Examiner Dudley: And your argument should be as a matter of law, because we have no facts in the case at all.

Mr. Swiren: I am offering my motion, and stating the grounds, and I will be very glad to support them at the outset of the hearing.

Trial Examiner Dudley: Well now, should not the testimony come before the motion based on that testimony? If you desire to introduce witnesses to support your motion, that is all right. Otherwise you should be sworn, and testify.

Mr. Swiren: I will be glad to be sworn, and testify. I now ask the Trial Examiner to direct Mr. Bajork, Regional
491 Director, and Mr. Disser, employed by the Board, to appear before the Trial Examiner, so that we can introduce their evidence.

Trial Examiner Dudley: In support of your motion?

Mr. Swiren: Yes.

Trial Examiner Dudley: Now, let us get your motion.

Mr. Swiren: My motion is—

Trial Examiner Dudley: Mr. Reporter, will you go back and begin at the very beginning, and read counsel's motion.

(The record was read as above recorded.)

Trial Examiner Dudley: That is your motion.

Mr. Swiren: Yes.

Trial Examiner Dudley: What I want to do if possible is to keep out a lot of wanderings around, and get a right to the point.

Mr. Swiren: That is why I am attempting to outline these matters. I wanted to outline these matters, and then the Trial Examiner could see what we had in mind, and the basis for it. I shall be very glad to proceed.

Trial Examiner Dudley: You say you have been unduly prejudiced—

Mr. Swiren: Yes.

Trial Examiner Dudley: —because the Board has served, or attempted to serve, in the capacity, or for the purposes of mediation—

492 Mr. Swiren: No, has attempted to serve as a representative of the party filing the charges in this case, by acting on their behalf in revising the contract to be submitted to this respondent. That is in violation of the law, and certainly runs counter to any good conscience, where the Board is to act as the judge in the matter.

Mr. Walsh: Well, then, your second ground has nothing to do with—

Mr. Swiren: I refer to threats made by Mr. Cranefield. I have not come to the third, fourth and fifth yet.

Mr. Walsh: Maybe we had better have them.

Mr. Swiren: Yes, I think it might expedite it.

Trial Examiner Dudley: Very well.

Mr. Swiren: Third, the threat made by Mr. Bajork, Regional Director of this Board for the Thirteenth Region, that he intends to break the back of the National Metal Trades Association, and will use the Fansteel case to do it.

Fourth, the refusal of the Trial Examiner to adjourn this matter until the conclusion of the pending conflicting litigation.

Fifth, the failure or refusal of the Board to issue subpoenaes, so that witnesses may be required to attend on behalf of the respondent.

I might say in addition—

Trial Examiner Dudley: Those are your five points?

493 Mr. Swiren: Yes. I might say this, with respect to the latter two points, that our limited ingenuity has not been sufficient to discover any previous case of this character, either before the present Board, or any prior board, and I do not think that Mr. Walsh has been able to uncover any reported decisions; and therefore we have a new and a novel situation that has not been determined or passed upon in the reported decisions heretofore.

It seems to me that under these circumstances, having in mind that the Board is clothed with jurisdiction, that it has the duty first of investigating, and then of prosecuting, and finally of deciding the matter, the Board ought to be particularly scrupulous to avoid any showing or even intimation of prejudice; and it would have to go a long way, even further than the courts, to avoid that prejudice.

What we are asking is merely what any court would as a matter of course, in any proceeding, allow.

Trial Examiner Dudley: Now, Mr. Swiren, let me ask you

about these points. The first point is this: you say that the Board assisted the union in preparing its charge.

Mr. Swiren: No, that is not correct. Apparently I am having some difficulty, if the Examiner please. The union presented an agreement, which was rejected by the company. Mr. Disser, representing the Board, then revised that agreement for the union, to be presented to the company; there-
494 by taking a position as a representative of the union.

That of course runs counter to the law, and any good conscience.

Trial Examiner Dudley: You mean, he assisted in revising the contract?

Mr. Swiren: Yes, and acted for one of the parties; and when an agent of the Board does that, I do not think the Board is qualified to act as between the parties.

Trial Examiner Dudley: Did he act as such in negotiations?

Mr. Swiren: In negotiations?

Trial Examiner Dudley: Yes.

Mr. Swiren: He appeared and attempted to negotiate.

Trial Examiner Dudley: That is the basis of the first point?

Mr. Swiren: Yes.

Mr. Walsh: May I say, may it please the Examiner, that the company would not meet with the union, and therefore anything that was written was of no force, and of no effect

Mr. Swiren: You may say that, Mr. Walsh, but I will do my own talking for myself.

Trial Examiner Dudley: What was the date of this, Mr. Swiren?

Mr. Swiren: That was in September 1936.

Trial Examiner Dudley: What date in September?

Mr. Swiren: I cannot tell you offhand. Mr. Disser would be the best witness for that, and he is the agent of your
495 Board.

Is he still employed by the Board, Mr. Walsh?

Mr. Walsh: Why, to my knowledge, he is.

Mr. Swiren: Well, your knowledge of course is very broad on these things, and I will take your word for it.

Mr. Walsh: Thank you.

Trial Examiner Dudley: Mr. Walsh, I thought that there was an original complaint filed in September 1936.

Mr. Walsh: There was.

Trial Examiner Dudley: Is that a part of the file?

Mr. Swiren: I think there was.

Mr. Walsh: It is not a part of the pleadings. I have the original charge here.

Mr. Swiren: What date is that, Mr. Walsh?

Mr. Walsh: Filed on the 15th day of September.

Trial Examiner Dudley: Do you desire to introduce it?

Mr. Walsh: I shall be glad to introduce it if you desire.

Trial Examiner Dudley: I think you should.

Mr. Swiren: We will object to that because we have never seen it, and do not know what it contains; it has never been served on us; we have never heard about it, even in substance, except indirectly and secondarily.

Trial Examiner Dudley: Mr. Walsh, I suggest that it should be introduced in evidence, to make the pleadings
496 complete.

Mr. Walsh: If the Examiner please, I will offer it in evidence, and ask that it be identified as BOARD'S EXHIBIT NO. 1-I.

Mr. Swiren: May I see it?

Mr. Walsh: Certainly.

Mr. Swiren: We object, if the Examiner please, on the grounds already stated. We have never been served with a copy of it; no action was taken on it; and as far as we know, it is just another piece of paper.

Trial Examiner Dudley: The objection is overruled, and it may be admitted in evidence.

(The document referred to was received in evidence as part of Board's Exhibit No. 1, and marked BOARD'S EXHIBIT NO. 1-I.)

Trial Examiner Dudley: Now, Mr. Swiren, in regard to your points on this motion: it seems to me that the points which you have made, alleging undue prejudice on the part of the Board, are not such as to indicate that the hearing which we will conduct here, will be characterized by any undue prejudice.

You must remember that the Board essentially has at least two independent parts of its organization; the regional directors, who have the duties given them by the statute, and by the regulations of the Board, and also the trial exam-
497 iners, who are not under the regional directors, nor affiliated with them in any way.

For example, I never heard the name of the Regional Director here until you mentioned it this morning. I never met Mr. Walsh, or heard of him, even, until I came into the court house this morning.

Mr. Swiren: I am not worried about Mr. Walsh.

Trial Examiner Dudley: The duty of the Regional director and the Regional attorney is to present facts as the result of their investigations, which may indicate a violation of the Act. It is their duty also to make investigations if complaints or charges are lodged with them. You can get that more definitely by referring to Section 10 paragraph (b).

I think therefore that the actions to date of the Regional director, and the other parties whom you have mentioned, would indicate no more than an investigation by those parties of charges that apparently have been lodged with them concerning violations of the Act; and their role today is to bring before the Board facts which would indicate that there were or were not violations of the Act. It is my duty as Trial Examiner to sit entirely independent of the Regional director and the Regional attorney, and to attempt to get those facts in, in orderly fashion, and report them to Washington with my recommendations.

Mr. Swiren: May I ask right there—

498 Trial Examiner Dudley: Just a moment.

Mr. Swiren: Pardon me. I am sorry.

Trial Examiner Dudley: (Continuing) In regard to your last point about the refusal to issue subpoenas, I think that if you find, when you are ready to introduce witnesses, that you have not been able to procure those witnesses, or have not been able to get subpoenaes for those witnesses, if you will inform me, I will take the proper steps to see that you get subpoenaes.

Mr. Swiren: Well, I might say that the Examiner's remarks just now are the first approach to a judicial consideration of the matter that we have received in our contacts with the Board so far.

Let me ask the Examiner whether Mr. Disser and Mr. Cranefield, and Mr. Bajork, of the Board, will be asked to appear so that the record may be complete, as far as evidence is concerned, on the motion?

Trial Examiner Dudley: The Examiner has never heard of those men, and he does not even know who they are, yet.

Mr. Swiren: They are all Labor Board employees.

Mr. Walsh: Off the record—

Trial Examiner Dudley: Pardon me. If Mr. Walsh does not call them as witnesses, and if you wish to call them as witnesses, you certainly have that right.

Mr. Swiren: We intend to ask the Examiner for sub-
499 poenaes for Messrs. Disser, Cranefield and Bajork, in accordance with the regulations.

Trial Examiner Dudley: I think possibly you can get them without subpoenaes.

Mr. Swiren: I would think so.

Mr. Walsh: I would like to argue the motion before the Examiner rules on it.

Mr. Swiren: He has already ruled for you.

Mr. Walsh: Has the Examiner ruled on the request for subpoenaes?

Trial Examiner Dudley: No, not on the request for subpoenas.

Mr. Walsh: (Continuing) For representatives of the Board?

Trial Examiner Dudley: First, let us take care of the motion about the Board refraining from a hearing because of prejudice.

Mr. Swiren: It is in connection with that motion that we are talking.

Trial Examiner Dudley: Mr. Walsh?

Mr. Walsh: I might make this statement to the Board and the Trial Examiner, for the record, that any action taken by Mr. Cranefield, or by Mr. Disser, or by Mr. Bajork, would be purely an administrative action; in their function as adminis-
trative agents of the Board, and not as judicial agents of
500 the Board. Anything that they may have done, or may have said, cannot possibly indicate any prejudice on the part of the Board toward this particular respondent.

As Mr. Swiren well knows, and as the Examiner has said, the Board makes its findings upon the facts that are produced.

Mr. Swiren: We hope that is true.

Mr. Walsh: (Continuing) In the hearing, in the record; and, as the Trial Examiner and Mr. Swiren know, those facts are reviewable by the Circuit Court of Appeals. So if, in the course of the conduct of the hearing, making a record upon which the Circuit Court of Appeals will rule, there is prejudicial error committed, either by members of the administrative setup of the Board, or the Trial Examiner, or the Board itself, those matters are reviewable by the Circuit Court of Appeals. So any act which may have preceded this hearing, by an administrative agent of the Board, can in no wise reflect any prejudice of any kind.

Therefore I move that the entire motion that the Board

refrain from a hearing on the ground of prejudice, be denied. The request for subpoenas for administrative agents of the Board must necessarily fall, with the denial of that motion.

Trial Examiner Dudley: Mr. Swiren, I might call your attention to the fact that out of a total of 865 cases—

Mr. Swiren: What page are you reading from?

Trial Examiner Dudley: Page 35. I just want to call
501 this to your attention. You will notice that table on page 35 of the annual report of the Board.

Mr. Swiren: Yes.

Trial Examiner Dudley: You see there that out of a total of 865 complaint cases, they disposed of 531 of them before they ever issued any complaint, which, you see, must necessarily follow as the result of investigation and attempts at settlement.

Mr. Swiren: Or a withdrawal of the charges.

Trial Examiner Dudley: Or a withdrawal of the charges made through the Board; which I think will explain what the Board has apparently been attempting to do, if what you say is correct.

Mr. Swiren: I might say this—

Trial Examiner Dudley: You will notice also that even after complaints were issued, there are nine cases shown to have been dismissed by the Trial Examiner, or the Board; which indicates that the action of the Board in making preliminary investigations does not mean that the Board or the Trial Examiner are prejudiced in any way.

Mr. Swiren: I appreciate the fact that this Trial Examiner has not had the benefit of that prejudice to date, and I trust we can continue our hearings without that benefit. On the other hand, I cannot ignore such matters as threats coming from responsible agents of the Board, as well as the Re-
502 gional Director, that are not to be regarded as within the normal investigation functions of any human being. That rather arises from an emotional prejudice of some kind or another; and whether that relates to the Board, or whether it is the individual prejudice of the particular individual, is something that the Trial Examiner ought to probe.

Trial Examiner Dudley: Well, I will have to overrule—or rather, to deny your motion.

Mr. Swiren: May I have the record show that we have an exception noted—

Trial Examiner Dudley: Yes.

Mr. Swiren: (Continuing) —to every ruling adverse to

us, so as to save time and trouble of stating individual exceptions?

Trial Examiner Dudley: The record will so show.

Mr. Swiren: Is that agreeable?

Mr. Walsh: That is all right.

Trial Examiner Dudley: The record will show that the attorney for the respondent has an exception noted to every adverse ruling, every ruling made adversely to his requests, objections or motions.

Now, do you have any other motions to make, Mr. Swiren?

Mr. Swiren: Yes, I have another motion. If the Examiner and counsel will refer to the complaint: I desire to move that

503 so much of the complaint as refers to the charges that the respondent failed to bargain collectively, included in paragraphs 5 and 6, be stricken from the complaint on the ground that the question is moot, by reason of the fact that the men making the complaint were discharged by the respondent, and therefore are not employees.

Trial Examiner Dudley: Will you just go back, please, Mr. Reporter, and read counsel's motion to me again.

(The motion was read as above recorded.)

Trial Examiner Dudley: Mr. Swiren, what do you mean by "the men making the complaint"? Do you mean, the men who signed the charge?

Mr. Swiren: Yes. This is made on behalf of men who were admittedly discharged, as set out in the complaint; and, those men not being employees, the question of whether the respondent bargained with them collectively or not, or bargained with their representatives at the time they were employees, is a moot question.

Mr. Walsh: Would the Trial Examiner care to hear argument on that?

Trial Examiner Dudley: Let me read paragraphs 5 and 6, first.

Mr. Swiren: I suggest in that connection that the Examiner also refer to paragraph 8, which relates to the discharge.

Trial Examiner Dudley: The ground for your motion

504 I take it is that paragraphs 5 and 6 attempt to charge the company with failure or refusal to enter into collective bargaining with certain employees; and paragraph 8 shows that those people were not employees.

Mr. Swiren: That is correct—are not now employees.

Trial Examiner Dudley: Well, is it not true that paragraphs 5 and 6 do not refer to any definite employees?

Mr. Swiren: That is correct.

Trial Examiner Dudley: So that those charges would still be valid charges, even though certain employees, as of that time, might not be employees now.

Mr. Swiren: That is conceivable, but rather difficult to believe, if you will read the whole charge.

Trial Examiner Dudley: The charges in 5 and 6 are general. They do not refer to any definite employees at all.

Mr. Swiren: That is right.

Trial Examiner Dudley: They do not name any definite employees.

Mr. Swiren: That is right, but the whole purport of the complaint makes it clear that they are the same people.

Trial Examiner Dudley: Well, are the employees named in paragraph 8, all of the employees of the plant?

Mr. Swiren: No, no; only a small percentage.

Trial Examiner Dudley: A small percentage?

Mr. Swiren: About 5 per cent.

505 Trial Examiner Dudley: Then paragraphs 5 and 6 could apply to general employees who are still employees.

Mr. Swiren: As a matter of fact, it is a larger percentage. I might just ask at this time—

Trial Examiner Dudley: I would like to point out—

Mr. Swiren: About one third of the employees are named in there.

Trial Examiner Dudley: About one third of the employees?

Mr. Swiren: Yes, just about one third of the total employees.

Trial Examiner Dudley: Well, furthermore, paragraphs 5 and 6 seem to refer to times prior to February 17th, 1937,—September 10th, 1936, on or about September 10th and September 12th, 1936; and February 17th, 1937; while paragraph 8—

Mr. Swiren: Refers only to February 17th.

Trial Examiner Dudley: (Continuing)—refers to February 17th; which would not interfere with any alleged refusal by the company of collective bargaining in September 1936.

Mr. Swiren: Well, if it is a moot question, there is not much point in going into it, Mr. Examiner. That is true.

Trial Examiner Dudley: Well, I do not see that it is a moot question.

Mr. Swiren: Well, let me renew my motion that the evidence goes in.

Trial Examiner Dudley: All right.

506 Mr. Swiren: And it will establish it. I withdraw my motion at this time.

Trial Examiner Dudley: You withdraw your motion now?

Mr. Swiren: Yes.

Trial Examiner Dudley: Very well. Do you have any other motions that you wish to make?

Mr. Swiren: Not now.

Trial Examiner Dudley: That motion is withdrawn.

Mr. Swiren: I might say for the record that Mr. Aitchison has responded to a subpoena duces tecum, and has brought with him all of the items specified in the subpoena that he had in his possession. There are a few of them, which he does not have in his possession, that he could not bring. The additional items that he does not have in his possession, that I have, are available of course.

Trial Examiner Dudley: Who is Mr. Aitchison?

Mr. Swiren: Mr. Aitchison is president of the respondent corporation. Of course the items that I have, that were specified in his subpoena, are at the disposal of the Board.

Trial Examiner Dudley: Now, Mr. Swiren, may I ask, before the attorney for the Board starts bringing out the facts regarding jurisdiction: is there any stipulation into which counsel may enter, that may save us some time?

Mr. Swiren: Yes, I think there are a number of stipulations.

507 Trial Examiner Dudley: What are they?

Mr. Swiren: I think we can perhaps stipulate to the substantial facts with respect to commerce; to the facts with respect to the seizure by force and violence of the plant of the respondent; to the court proceedings which then ensued, and preceded the alleged failure to reinstate—

Trial Examiner Dudley: Let us take first the stipulation regarding commerce. Let us take them one at a time.

Mr. Swiren: My suggestion, if the Examiner please, was to take them as a unit.

Trial Examiner Dudley: Oh.

Mr. Swiren: We do not care to stipulate unless the government is willing to do the same with respect to the facts that they know. I might saw in that connection that we were not impressed by the suggestion in the complaint that while we were engaged in normal operations, we discharged men, as set out in paragraph 8; when every school boy who was

able to read the papers during that period, in any metropolitan center in the United States, knew that there was a violent sit-down strike at Fansteel.

Mr. Walsh: I am willing to stipulate with the respondent that on February 17th, at the time when the respondent attempted to discharge its employees, named in paragraph 8 of the complaint, there was a strike in progress; and that there were no normal operations of the company going on.

508 Mr. Swiren: That is not enough.

Mr. Walsh: How is that?

Mr. Swiren: That is not enough.

Mr. Walsh: I will further stipulate that for the next succeeding nine days the company engaged in no operations except laboratory experiments.

Mr. Swiren: Will you stipulate as to the men who seized the plant by force.

Trial Examiner Dudley: Do you mean, as to their identity?

Mr. Swiren: Yes.

Mr. Walsh: No, I will not stipulate that, because I do not know.

Mr. Swiren: Well then, we had better find out from the witness stand.

Mr. Walsh: That is all right with me.

Trial Examiner Dudley: Well, I will ask again, are there any stipulations into which counsel can enter, that will save us time?

Mr. Swiren: I do not know of any, under the circumstances.

Mr. Walsh: I of course cannot stipulate the facts that I do not know. At this time may we have a short recess, if the Examiner please.

(A short recess was taken.)

Trial Examiner Dudley: Are both counsel present?

Mr. Walsh: Yes.

509 Mr. Swiren: Yes, your Honor.

Trial Examiner Dudley: The hearing is now called to order.

Mr. Walsh: If the Examiner please, during the recess period I have been served with an injunctional order issuing out of the Circuit Court of Lake County, along with a writ issuing out of that Court, enjoining the progress of this

hearing before the National Labor Relations Board, in the matter of the Fansteel Metallurgical Corporation, and the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 66, until the conclusion of the hearing which is now proceeding in the Circuit Court of Lake County.

I will further say, I am advised by counsel for the respondent that in all probability the litigation in that Court can be terminated during the day today, although possibly it may run over until tomorrow. I would suggest that, in deference to the writ issued from the Circuit Court of Lake County, we in all respects comply with it, and cease and desist the hearing of this case until at least tomorrow morning; at which time, if that hearing is still in progress, I would move for a further adjournment.

Trial Examiner Dudley: You move, then, that we adjourn this hearing until tomorrow morning?

Mr. Walsh: I move that we adjourn until tomorrow morning.

510 Mr. Swiren: So that the Examiner—

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: I have no objection, but so that the Examiner may know the facts, I think I ought to say that at the inception of the hearing before the Circuit Court, we suggested, in the interests of saving time, that the parties be heard with respect to both matters pending, namely, the contempt proceeding and the application for final decree, knowing that that would shorten the hearing by about two or three days. That however was objected to at that time. Consequently, so far as this hearing is concerned, prior to its inception we offered to stipulate as to matters which would ordinarily consume, I am advised by the Regional Director, two or three days, in order to shorten the time, and therefore that conflict with the hearing pending in the Circuit Court might be avoided. But I merely state these things so that the Examiner will know that we have no desire to delay the matter unduly, or to extend the hearing beyond what is absolutely essential.

Trial Examiner Dudley: Mr. Walsh, do you want to introduce as an exhibit these writs, or orders?

Mr. Walsh: No, I will not introduce them in this record at this time. I will make copies of the writs, and forward the copies to Washington in our regular procedure; and I will later introduce the writs.

Mr. Swiren: That is all right.

511 Mr. Walsh: I might state for the benefit of counsel, it is my understanding that there has been some discussion in connection with the permanent injunction which will further shorten up the proceedings over there.

Trial Examiner Dudley: To what hour would counsel like to adjourn in the morning; nine o'clock?

Mr. Swiren: I am from out of town, your Honor; I do not live here in Waukegan.

Trial Examiner Dudley: Ten o'clock?

Mr. Swiren: I suggest we try it out at ten o'clock in the morning, and then see. We are convening at nine-thirty over there, so that it is only good sense to make this ten o'clock, to see what happens there.

Trial Examiner Dudley: Very well then; this hearing is now adjourned until ten o'clock tomorrow morning, Daylight Saving Time.

(Thereupon, at 12:25 o'clock p. m., June 7th, 1937, an adjournment was taken until Tuesday, June 8th, 1937, at the hour of 10:00 o'clock a. m.)

513 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XIII-C-80) • •

Room 4, New U. S. Post Office Building,
Waukegan, Illinois,
Tuesday, June 8th, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Report:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

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514 PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show the convening of the hearing.

Mr. Walsh: If the Examiner please, counsel for the Board has been advised that the hearing in the Circuit Court of Lake County is still in progress this morning, but that there is a very good prospect that that hearing will be concluded during the day. I therefore suggest, in deference to the injunction issued by the Circuit Court of Lake County, that this hearing be now continued until ten o'clock tomorrow morning.

Trial Examiner Dudley: The motion is granted.

(Thereupon, at 10:05 o'clock a. m., June 8th, 1937, the hearing in the above entitled matter was adjourned until Wednesday, June 9th, 1937, at the hour of 10:00 o'clock a. m.)

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517 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XIII-C-80) • •

Room 4, New U. S. Post Office Building,
Waukegan, Illinois,
Wednesday, June 9th, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the National Labor Relations Board.

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518 PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show that the hearing is now reconvened. At this time we will take a recess.

(A short recess was taken.)

Trial Examiner Dudley: Let the record show that a further recess is taken at this time until one-thirty o'clock this afternoon.

(Thereupon, at 11:00 o'clock a. m., a recess was taken until 1:30 o'clock p. m.)

After Recess.

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Also Present:

Max Swiren.

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, I have now received the official designation of the Trial Examiner. Does counsel desire to see it?

Mr. Swiren: I do not have the slightest doubt but what it is a proper order.

Mr. Walsh: I will hand it to the reporter, and ask that it be received in evidence as Board's Exhibit 1-H. I believe the record of yesterday shows that it was offered.

519 Trial Examiner Dudley: Is there any objection to the admission of this document in evidence?

Mr. Swiren: No.

Trial Examiner Dudley: Let the record show that it is received as Board's Exhibit 1-H.

Mr. Swiren: If the Examiner please, before we proceed further at this time, I would like to say that the hearing before the Circuit Court of Lake County has not quite concluded. They are going on again at two o'clock for the purpose of passing on the appeal bonds for the men who were sentenced for contempt yesterday; as well as to enter the formal order confirming the oral minute entry of yesterday; and the final decree; and I supect that will not take more than hour, or thereabouts. I thought that we ought to go ahead at this time, and try to stipulate, and cover as much of the ground as we could, in the hope of expediting the hearing, notwithstanding the fact that that other hearing, as I say, has not quite been completed; and then we can go forward later in the afternoon with any testimony that Mr. Walsh has to offer. By that time that hearing ought to be all over, and my associates available here.

Trial Examiner Dudley: Is there any objection to that procedure?

Mr. Walsh: The only thought I have in mind is that Mr. Swiren has advised me that they will move the Circuit

520 Court of Lake County to dismiss the bill of complaint seeking to enjoin the progress of this hearing.

Mr. Swiren: Just as soon as the other hearing is completed, which as I say will probably be in the next couple of hours—

Mr. Walsh: All right.

Mr. Swiren: (Continuing)—we will ask for an order dissolving the injunction instanter and dismissing the proceeding.

Mr. Walsh: And you will furnish me with a copy, so that I can introduce it into our record.

Mr. Swiren: Oh, yes.

Mr. Walsh: That is a copy of the minute, or order, or whatever the court has entered.

Mr. Swiren: I shall be glad to, or I will stipulate that it has been done; either way.

Mr. Walsh: All right.

Trial Examiner Dudley: Then let us declare a recess, while you discuss the stipulation.

Mr. Swiren: Very well.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: I will offer into evidence at this time as Board's Exhibit No. 2, Form 10-K of the United States Securities and Exchange Commission, filed with the Com-
521 mission April 27th, 1936; and also part of Form 10-K of the Securities and Exchange Commission, filed with the Commission April 26th, 1937.

I will offer into evidence as BOARD'S EXHIBIT NO. 3, an excerpt from Form 10 of the Securities and Exchange Commission filed with the Commissioner on December 24th, 1935.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection to Board's Exhibits 2 and 3.

Trial Examiner Dudley: There being no objection, the exhibits are received in evidence.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 2 and 3, respectively.)

Mr. Walsh: I will offer into evidence at this time BOARD'S EXHIBIT NO. 4, which is a photostatic copy of Standard Corporation Records, pages 1019 and 1020, purporting to be statistics of the Fansteel Metallurgical Corporation, as compiled and published by Standard Statistics.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: Yes, that is objected to upon the ground that it is entirely immaterial to any of the issues in this case; and further, upon the ground that its accuracy is not substantiated by any witness; nor does it come from the respondent, but purports merely to be information compiled by some outside agency.

522 Trial Examiner Dudley: The objection is overruled, and the document is admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 4.)

Mr. Swiren: Now, if the Examiner please, I want to take this opportunity to request of the Examiner, in accordance with the regulations, the issuance of the subpoenas and subpoenas duces tecum, applied for in our application filed on June 3rd, 1937 with Leonard C. Bajork, XIIIth Region Re-

gional Director, which appears as Exhibit 1-G, presented by the Board.

Having in mind the very brief interval permitted by the Board to elapse from the date of its complaint—or the date of the amended charge upon which the complaint rests, and the date fixed for hearing, it seems to me that, in order to secure a fair hearing, and certainly to insure recognition of the constitutional right of the respondent to due process, the issuance of these subpoenas should have been expedited.

Delay will undoubtedly be encountered in the matter of serving these subpoenas, in view of the large number of persons involved; and I now serve notice on counsel for the Board that we shall insist upon the issuance of the subpoenas, and an adequate period in which to serve the subpoenas on the parties named therein, before proceeding with our case.

523 I ask the Examiner to communicate with the Board very promptly, or to have the attorney for the Board communicate with the Board promptly, to the end that we do not have any delay in the hearing, and that the subpoenas be issued and delivered to us for service forthwith.

Trial Examiner Dudley: Mr. Walsh, you will take this matter up with the Board, will you?

Mr. Walsh: Yes, Mr. Examiner. I will communicate with the Board, and obtain as quickly as I can their answer, and their order as to the granting or denying of counsel's application; and if the application is granted, I will ask them to use all haste in getting the subpoenas to counsel,—such subpoenas as they desire to issue.

If the application is granted, and you find yourself short of time, why, I will be willing to work out any satisfactory arrangement to give you ample time to serve such subpoenas as the Board may issue.

Mr. Swiren: And of course, if necessary subpoenas be refused by the Board, we shall feel free to take whatever steps may be necessary to insure a fair hearing to our client.

Mr. Walsh: I would expect counsel to do nothing else.

Trial Examiner Dudley: Is there anything else at this time? Are there any other exhibits to be offered?

Mr. Walsh: I have some material here that is usually put in, in these cases.

524 Mr. Swiren: If you want to stipulate that strikes are not profitable, either for business or for labor, I will so stipulate.

Mr. Walsh: Take that stipulation down, Mr. Reporter, please. Counsel for respondent stipulates that strikes are not profitable, either for business or for labor.

Mr. Swiren: Yes.

Trial Examiner Dudley: Do you so stipulate?

Mr. Swiren: Yes. I suggest, before you offer anything else here, that you submit it to us, and give us a chance to look at it. I think that will save some time, and may obviate objection.

Mr. Walsh: Very well.

Mr. Swiren: Take this for the record, Mr. Reporter. I take it that Mr. Aitchison is now excused—

Trial Examiner Dudley: This is off the record, Mr. Reporter.

The Reporter: Counsel said it was for the record, your Honor.

Trial Examiner Dudley: No; not for the record.

Mr. Swiren: Are you taking this, Mr. Reporter? I said I wanted this for the record.

Trial Examiner Dudley: I am sorry. I misunderstood.

Mr. Swiren: I take it the record may show that Mr. Aitchison is now excused from producing the following items appearing in his subpoena duces tecum:

525 No. 1; records of outbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 2; records of inbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 3; summary of outbound shipments.

Mr. Walsh: Right.

Mr. Swiren: No. 4; summary of inbound shipments.

No. 5; combined summary.

No. 8, various financial statements and accounts.

Mr. Walsh: That is right.

Trial Examiner Dudley: The record may show that he is excused, as pertaining to the items named.

Mr. Walsh: At this time if the Examiner please, I suggest that we adjourn until ninety-thirty tomorrow morning.

Trial Examiner Dudley: I declare the hearing adjourned at this time until nine-thirty o'clock tomorrow morning, Thursday, June 10th, Daylight Saving Time.

(Thereupon, at 3:50 o'clock p. m., Wednesday, June 9th, 1937, the above entitled matter was adjourned until Thursday, June 10th, 1937, at the hour of 9:30 o'clock a. m., Room 4, New Post Office Building, Waukegan, Illinois.)

529 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* *(Caption—XIII-C-80.) * *

Room 4, New U. S. Post Office Building,
Waukegan, Illinois,
Thursday, June 10th, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

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530 PROCEEDINGS.

Trial Examiner Dudley: Mr. Reporter, let the record show that the hearing has been convened at this time, and adjourned to the Jury Room of the Lake County Circuit Court, in the Lake County Court House.

(Thereupon the hearing was adjourned to the Jury Room of the Lake County Circuit Court, in the Lake County Court House, and was resumed at 10:15 a. m.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: If the Examiner please, at this time I offer for the record the stipulation discussed by counsel yesterday, and ask that it be marked as BOARD'S EXHIBIT NO. .....

Trial Examiner Dudley: 5.

Mr. Walsh: —5, concerning the facts constituting the company's operations, the shipment of raw materials into the plant, and the shipment of finished products out of the plant. The stipulation also covers other matters.

I offer it in evidence.

Mr. Swiren: I take it the entire stipulation is offered.

Mr. Walsh: Yes.

Mr. Swiren: There is no objection.

Mr. Walsh: The entire stipulation is offered.

Trial Examiner Dudley: It is admitted, then, and will be designated as BOARD'S EXHIBIT NO. 5.

531 Mr. Walsh: And it is understood that it will be recopied.

Mr. Swiren: Yes.

Mr. Walsh: And that counsel will sign the corrected draft.

Mr. Swiren: Yes.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 5.)

Mr. Swiren: May I state for the record, if the Examiner please, that on the 3rd day of June, 1937, I made service on Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, of the answer filed in this cause by respondent; of the motion for adjournment, filed with the Regional Director; and the affidavit in support of that motion; which service was acknowledged by counsel for the lodge, Mr. Paul Glaser.

I should like at this time to present a motion to the Trial Examiner, if I may interrupt at this point to do so, and as a preliminary to that motion I want to say that, as set out in our answer, proceedings have been pending in the Circuit Court of Lake County entitled Fansteel Metallurgical Corporation, a New York corporation, plaintiff, versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al., defendants, No. 37551.

In that case an order of commitment for contempt was duly entered on the 8th day of June, A. D. 1937, containing
532 certain findings, determinations and adjudications by that court; and subsequently, on the 9th day of June, A. D. 1937, there was duly entered in that proceeding a final decree containing certain findings, determinations and adjudications.

I should like to offer certified copies of both the order referred to, and the final decree; and on basis of those instruments, the order and the decree entered by the Circuit Court of Lake County, move to strike from the complaint—

Trial Examiner Dudley: You are offering them in evidence are you?

Mr. Swiren: Yes.

Trial Examiner Dudley: Suppose you offer them first.

Mr. Swiren: Very well.

Trial Examiner Dudley: And then make your motion separately.

Mr. Keele: We have just sent for them, your Honor. That is why we digressed for a moment.

Mr. Swiren: I have just sent for them.

Trial Examiner Dudley: Very well. Off the record.

(There was a brief discussion off the record.)

Trial Examiner Dudley: Proceed.

Mr. Swiren: May I temporarily tender the original order and final decree which the clerk has permitted to be exhibited temporarily, and then substitute certified copies thereof as soon as they are provided by the clerk of the Court,—

533 which should be later this morning.

The documents being offered are the judgment order upon the contempt hearing in the case already identified, in the Circuit Court of Lake County, No. 37551, entered at Waukegan, Illinois on the 8th day of June, A. D. 1937 by Theodore Forby, Judge of that court—

Trial Examiner Dudley: As Respondent's Exhibit No. 1?

Mr. Swiren: Respondent's Exhibit No. 1. Let us not mark these original court documents.

Trial Examiner Dudley: No.

Mr. Swiren: We will mark the certified copies.

Trial Examiner Dudley: That first one is the order?

Mr. Swiren: The order; and I will ask that the final decree be received and marked as RESPONDENT'S EXHIBIT NO. 2, being the final decree entered in the cause already identified, No. 37551, in the Circuit Court of Lake County, Illinois, entered at Waukegan, Illinois, the 9th day of June, A. D. 1937 by Theodore Forby, Judge of that court.

Trial Examiner Dudley: Is there any objection, Mr. Walsh?

Mr. Walsh: I have no objection, no, Mr. Examiner, except as to the materiality. I may say that they are not material.

Mr. Swiren: Well, are you objecting or are you not, Mr. Walsh?

Mr. Walsh: Well, I will withdraw what I said, and state my objection all over again. I object, if the Examiner

534 please, to the introduction of any or either of these papers in evidence, on the ground that they are not material to any issue before this Board.

Mr. Swiren: Mr. Examiner—

Trial Examiner Dudley: Just a moment, Mr. Swiren. You may make a short statement as to your reason for moving the introduction of these documents.

Mr. Swiren: If the Examiner please, the proceedings which we have already referred to, before the Circuit Court of Lake County, are outlined in our answer and brought into issue by the answer.

The plaintiff in that case was Fansteel Metallurgical Corporation, respondents before the Board in this hearing. The principal defendant, or one of the principal defendants, was Lodge No. 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, which is the party presenting the charge upon which the complaint is based, and one of the parties to this proceeding.

There was involved in that proceeding, first, the occupation of the plant of respondent on February 17th, 1937 by a large number of men, many of whom are named in paragraphs 8 and 11 of the complaint, and all of whom were acting at the instigation and direction of Lodge No. 66, already referred to.

There was also involved the discharge of the men who
535 so seized the plant on that date. As Mr. Keele points out, most of the men mentioned in paragraphs 8 and 11 of the complaint, were men thus involved in the seizure, and found so to be involved by the order heretofore referred to as Respondent's Exhibit No. 1.

There was further involved the violence in connection with the seizure and resistance of these men to the law enforcement officers endeavoring to execute a writ of injunction issued by the Circuit Court of Lake County, directing them to leave the premises and restore possession to the respondent, as their lawful owner. There was resistance to the service by the sheriff of the writ of attachment requiring that those men be brought before the Circuit Court of Lake County, to show cause, if any they had, why they should not be held in contempt of that court for violating the injunctional order, and interfering with the sheriff in its execution.

That case also involved the determination between the parties as to the legality or illegality of the seizure and retention of the premises by those men, under the direction of said Lodge 66, and constitutes, with respect to these and the other matters set out in the order and decree offered respectively as Respondent's Exhibits Nos. 1 and 2 herein, a final and conclusive determination of those facts as between the par-

ties; and those findings constitute res adjudicata of the questions to which I am shortly to refer.

536 In that connection I think it is most important to point out that both the order and the decree offered contain a final adjudication as between the corporation, the union and those men, as to their discharge on February 17, 1937, and the reason for the discharge. Those matters of course are all vital issues in this very case.

Now, if the men were properly discharged, and not in violation of the Act, then for the most part the remaining questions become moot as the evidence will shortly demonstrate.

Trial Examiner Dudley: I will admit both documents into evidence as Respondent's Exhibits Nos. 1 and 2 respectively.

Mr. Walsh: Let the record show my exception, if the Examiner please.

Mr. Swiren: We had it understood, for the purpose of the record, Mr. Walsh, that there would be an exception noted automatically in the case of every adverse ruling, so as to save time.

Mr. Walsh: I had not made such a request, but I will, to guard against failure to note an exception from time to time.

Mr. Keele: Then may the record show that it is stipulated by and between counsel that in the case of any motion—

Mr. Swiren: Any adverse ruling.

Mr. Keele: —or any objecion, adversely ruled upon—

Mr. Swiren: Or any other adverse ruling.

Mr. Keele: —or any other adverse ruling, an exception

537 will be noted, so as to save time. Is that agreeable, counsel, to have the record show that?

Mr. Walsh: That is all right; that is perfectly all right with me.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 1 and 2 respectively.)

Mr. Swiren: Now, if the Examiner please, upon the basis of Respondent's Exhibits Nos. 1 and 2, I desire at this time to move that so much of the complaint as is inconsistent with the findings, or touches upon the subject matter of the findings and adjudications of the order and decree, including specifically, but not exclusively, so much of paragraphs 8 and 11 as refers to the men with respect to whom findings and adjudications are made in the order and/or decree, be stricken, and disregarded in this hearing.

Trial Examiner Dudley: Mr. Walsh?

Mr. Walsh: Does the Examiner desire to hear from me on that question?

Trial Examiner Dudley: Do you want to make a statement?

Mr. Walsh: Yes, I do.

Trial Examiner Dudley: Make a brief statement.

Mr. Walsh: The Trial Examiner will recall that paragraphs 8 and 11 refer to the discharge and refusal to reinstate certain persons who it is alleged engaged in the strike.

538 I might state this, that all of the proceedings had between the corporation and Lodge 66 and its members, have no bearing on the issues before this Board; and any facts determined in that proceeding can in no wise bind the National Labor Relations Board, as to what those facts are.

Therefore the objection to the introduction and reception into evidence of these exhibits, on the ground of materiality, would likewise apply; or I should say, the reasons for that objection, would likewise apply to a denial of the motion to strike the paragraphs referred to by Mr. Swiren; and it is on those grounds generally that I would ask Mr. Swiren's motion be denied.

Mr. Swiren: If the Examiner please, both the party making the charge, which automatically makes it a party to this proceeding, and the men on whose behalf the complaint is brought, were parties to the proceeding for a determination of these very issues between themselves and the respondent.

We have here a stuation in which a lawsuit has ensued between an employee, or a group of employees, and the employer, one of the issues of which was their discharge; and the court has now, as between those parties, adjudicated and determined, first, that there was a discharge; and second, that the discharge occurred and was made by reason of the violent and unlawful seizure of respondent's property by these employees, and their unlawful withholding of that

539 property from respondent.

I cannot think of anything more material than a determination between the two real parties in interest, the employer and the employees.

Trial Examiner Dudley: I will rule that respondent's Exhibits 1 and 2 may be material insofar as they may give some evidence about the facts which are in controversy in this hearing; but that findings of fact by the Circuit Court of Lake County, Illinois are not necessarily conclusive upon the

findings to be made by this Board, inasmuch as this is a proceeding involving different parties to the extent of the position of the Board, and also involving different laws, and therefore different aspects of the facts, some of which may be the same, or may not be the same in the two hearings with which we are concerned.

The motion is therefore denied.

Mr. Swiren: Exception.

Trial Examiner Dudley: Are there any other motions at this time?

Mr. Walsh: I would like to introduce in evidence at this time, if the Examiner please, a copy, not certified, and I do not myself attest the correctness of it because I have not been able to take the time to check it; but it is a copy of the complaint in a certain cause in the Circuit Court of Lake County entitled Fansteel Metallurgical Corporation, 540 plaintiff, versus National Labor Relations Board, et al., No. 37939.

I will offer the copy in evidence.

Mr. Swiren: We do not care about the certification. We will check it.

Mr. Walsh: Counsel may check it, and check it during the day.

Mr. Keele: Yes.

Mr. Walsh: I also wish at this time to offier in evidence the injunctional writ issued in that same cause. This happens to be the original writ. I do not know upon whom attempted service was made. I offer this document as Board's Exhibit No. 7. I do not have in my file a copy of the injunctional order.

Mr. Keele: We will supply it.

Mr. Walsh: Very well; I will offer it later on. Let the record show that I will offer as Board's Exhibit No. 8, the injunctional order, and that will be supplied later, so that they will be all together.

Trial Examiner Dudley: Very well. Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: The documents may be so admitted, then, and designated as Board's Exhibits Nos. 6, 7 and 8 respectively.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 6, 7 and 8 respectively.)

541 Trial Examiner Dudley: Now, are there any other motions, exhibits, or miscellaneous matters to come before the Board at this time? I might state for the purpose of the record, since Mr. Walsh is uncertain about the service of this writ, that it was served on me. It was served on me in the Federal Post Office, located in Waukegan, Illinois.

Mr. Walsh: By an alleged deputy sheriff.

Trial Examiner Dudley: By an alleged deputy sheriff, or by one who purported to be a deputy sheriff.

Mr. Swiren: If the Examiner please, I take it that knowledge of a writ is sufficient, however it is obtained.

Mr. Walsh: Well, be that as it may we obeyed the writ.

Mr. Keele: We will stipulate that this shall have the same effect as though it were certified.

Mr. Swiren: You do not have to certify it. We do not object.

Trial Examiner Dudley: Do you have any question as to its accuracy?

Mr. Walsh: All I know is that I gave it to a stenographer, and told her to copy it and be sure she got it right; and she said she did.

Trial Examiner Dudley: Do you not think we ought to have a better statement to the effect that it is a correct copy, if we are going to admit it at all?

Mr. Swiren: We will check it.

542 Mr. Keele: There are one or two points here that I am not just sure of.

Trial Examiner Dudley: I think counsel should check it.

Mr. Walsh: Yes.

Trial Examiner Dudley: We want to be sure that it is accurate.

Mr. Keele: Very well, then, we will check it, and then stipulate later.

Mr. Walsh: All right.

Mr. Swiren: At this time, if the Examiner please, I desire to renew the application made yesterday for subpoenas and subpoenas duces tecum, for the summoning of witnesses and the gathering of evidence on behalf of respondent.

Trial Examiner Dudley: I understand that Mr. Walsh has telegraphed Washington—he did so last night—for a decision on the application for these subpoenas.

Mr. Walsh: That is correct; I have so telegraphed, but I have not yet received a reply.

Trial Examiner Dudley: Are there any other motions, ex-

hibits, or similar matters to come before the Board at this time? If not, as I indicated last night, there are some questions which I would like to ask Mr. Aitchison.

Mr. Walsh: I will call Mr. Aitchison as a witness at this time. Will you swear the witness, please, Mr. Examiner?

ROBERT J. AITCHISON, called as a witness for the
543 National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh): Will you state your full name, please, Mr. Aitchison?

A. Robert J. Aitchison.

Q. Where do you live?

A. In Glencoe, Illinois.

Q. You are president of Fansteel Metallurgical Corporation, are you?

A. Yes.

Q. And have been since 1932, I believe?

A. No, sir, I have been president since May, 1936.

Q. Oh, I see.

A. I was vice president and general manager since February, 1932, up to May, 1936.

Q. I see. Then you are familiar with the business done by the company?

A. Yes, sir.

Q. Will you describe for us the physical properties which make up your plant at North Chicago, Illinois?

A. The plant at North Chicago consists of approximately seven and a half acres of ground, and 15 buildings. Two of them are concrete, brick and steel construction. Two of them are corrugated iron and steel type buildings. One
544 is a wooden building—no, three of them are corrugated iron, instead of two. All of the rest are either frame, or old brick mill-type construction, with a stone foundation.

Q. Now, the type of business that your company does, is what?

A. We describe our business as manufacturers of rare metals. We extract from ores, or in some instances intermediate products, the metal itself, and make it into ingots, rods, wire, sheet, and fabricated products constructed out of either wire, rods or sheet.

Q. Now, the main products which you use are tungsten and tantalum. That constitutes the greater part of your business does it not?

A. That is the biggest part, yes, sir.

Q. Now, your manufacturing processes in general are what? Just describe the manufacturing processes in general for tungsten for instance.

A. Well, the processes are similar on all of these metals in the sense that the metals are of an extremely high melting point, and there is no known methods of smelting or extraction such as is employed with the base metals of iron or lead. All of these are extracted by chemical processes, in which the ores are converted into salts, or fluorides; in some instances they are fully dissolved in acids, and precipitated out, or reduced by crystallization or fractional crystallization; and eventually reduced to powder metal, 545 which powder metal is pressed into ingots, and formed into a solid mass by a sintering process; and then from the sintered ingots we roll sheet, or we swedge it into bars, or we draw it into wire.

Q. Now, those pressed powder metal ingots are of about what weight?

A. Well, that depends on the metal that we are processing.

Q. Take tungsten for instance.

A. Oh, up to one kilo, a kilo being 2.2 pounds. With tantalum the largest bar that we make is 2900 grams, which is just 700 grams more than one kilo.

Q. Now, Mr. Aitchison, as I understand it, the raw material moves through your chemical department, and processes are applied to it there; and then the powder is pressed into ingots, and they are put in sintering furnaces.

A. Yes, sir, which has the effect of welding them or annealing them together into a solid mass.

Q. And then those ingots—

A. Those weights are purely in the form of ingots.

Q. Yes. And then those ingots are taken and heated, and put through a swedging process, are they not?

A. Yes, sir.

Q. And that swedging process consists of drawing the ingots out?

A. We call it cold swedging, although it is done at high temperatures, but we call it cold in the sense that it does 546 not melt the metal.

Q. The temperatures are relatively high?
A. Very high.
Q. Those temperatures run up to 2600 degrees, do they not?
A. Oh, they run up to 6,000 and 7,000 degrees Fahrenheit.
Q. They do?
A. Yes, sir.
Q. And at 7,000 degrees Fahrenheit, do you have a cold swedging operation?
A. Oh, no. We swedge it at about 2200 degrees—or rather, we swedge at between 1600 and 2200 degrees. That is cold swedging in relation to a temperature of 7,000 degrees.
Q. I see. Then after your tungsten—referring again to tungsten—is swedged down, it goes to various other departments for other processes, does it not?
A. After the swedging of the ingots, they are swedged into round bars, and each swedging operation elongates the bar and reduces the diameter.
Q. And so when you finish with a one-kilo ingot, you have a long rod, or several long rods?
A. Round rods.
Q. (Continuing.) Round rods, of diameters varying with the purpose for which they are to be used; is that correct?
A. Yes, sir, that is right. I might state that the original dimensions of these ingots are 5/8ths of an inch square 547 by about 7½ to 9 inches long.
Q. And the size to which they are reduced will vary—I mean the length of the rods will vary in accordance to the size to which they are reduced?
A. With the diameter, yes, sir.
Q. Now, assuming that we take one of these bars through the contact department. Supposing a tungsten bar is designed for contact points. Tell us what happens.
A. Well, assuming that we are going to have contact points .156 in diameter, we start with a rod slightly in excess of that.
Q. Yes.
A. And then the rod is sent to the cutting department, where it is sliced into thin disks.
Q. Those disks being about .150 in diameter; is that correct?

A. Well, they are finished to whatever diameter dimension you are seeking.

Q. And their thickness would be about what; about how thick?

A. From 25/1000ths to 40/000ths.

Q. Of an inch?

A. Yes, sir.

Q. Now, after they have finished this slicing process, what next is done to them?

A. Well, if they are making contacts, some of them
548 have to be mounted on a screw; some have to be mounted on what we call a tack, or a rivet; and some of them are mounted directly on breaker-arm devices. We manufacture the screws, and we manufacture the rivets, but we do not manufacture the breaker-arms; those are supplied by the ignition people. We affix the contacts to the head of the screw, or the breaker-arm, by a brazing process.

Q. And that process is performed in what manner, generally?

A. Well, you mount the screw with a piece of brazing material, copper or an alloy, and put the piece of tungsten on top of it, and run it through a furnace of a temperature that will cause the copper to melt, and then as it cools it sticks the contact to the mounting material.

Q. The temperature at which copper melts is considerably lower than that at which tungsten melts, and therefore there is no danger of the tungsten melting?

A. That is about 900 to 1,000 degrees centigrade.

Q. Then after that mounting is done, there is a further operation on them before they are finished, is there not?

A. Well, in some instances they have to be side-ground, and smoothed; and in some instances they are crowned, so as to perfect the contact as they come together. One of them is slightly rounded; that is the crowning. Then they are inspected, packed and shipped.

Q. Inspected, packed and shipped?

549 A. Yes.

Q. And then they are gone?

A. Yes, sir.

Q. Now, the operations in the tantalum are about the same, I assume; through the sintering department—through the chemical and sintering departments generally, are they not?

A. Well, the processes in general are the same, although they are not exactly the same.

Q. Well, at various degrees of temperature, I suppose.

A. No, not in the temperature; there are a great many variations.

Q. Well, for instance your tungsten is sintered in a furnace charged with hydrogen, and your tantalum is sintered in a vacuum, is it not?

A. Yes, sir.

Q. All right. Just go ahead.

A. One of them can be worked in hydrogen, and one has to be worked in a vacuum.

Q. Now, your processes in general with swedging the tantalum: are they the same as with the tungsten?

A. Well, there is much more tantalum goes through the rolling process.

Q. Because it in large part is fabricated, is it not?

A. Yes, sir, either by us or by others.

Q. It is either fabricated by you, or prepared in a 550 manner so that someone else can fabricate it?

A. Yes, sir.

Q. Now, referring to the tantalum: describe in general its uses. It is rather a new metal, is it not, and rather a rare metal?

A. Well, it is not so new, but it is very little known.

Q. I see.

A. It is not new in the sense that before they had tungsten filament lamps, there was a tantalum filament used, but tungsten followed so closely on the heels of tantalum that it it did not amount to very much. But tantalum has two outstanding characteristics. One of them is resistance to corrosion of practically every acid or chemical that is known, except a combination of sulphuric acid and hydrofluoric; and because of that, it is suitable for use in any operation where the material is subject to highly corrosive substances.

As an illustration, in the making of rayon they take the cellulose and extrude it through a small spinneret, that has very small holes; and each one of those constitutes a filament or thread when it is finally spun; but the cellulose that comes through contains approximately 18 per cent sulphuric acid, and therefore it needs one of the two metals in the world that will withstand that acid, one being gold and the other being tantalum.

Another use naturally is in the chemical class, where
551 some of their processes subject articles to severe corrosion; and corrosion means contamination of the product. It is made into seamless tubes or coils; heat-exchangers; and equipment of that nature; so that the reactions can be carried on with those corrosive substances without contamination and without a short life of the equipment.

Another feature of it is its electronic properties, that make it superior for power tubes, and the perfection of transmission, where that is required; partly because of its electronic properties, and partly because, when it is heated, it will absorb any gas that remains in the tube. No matter how perfect the evacuation of the tube, whether metal or glass, may be, there are still traces, minute traces of impurities. When you have tantalum anodes in there, and they are heated, they attract the gas and absorb it and hold it and never let it go; which gives the last degree of perfection.

It is used in medical tubes, including these fever tubes which have recently been introduced into the market.

Tantalum also has another characteristic in the sense that it does not wed readily with other metals.

Q. Does not what?

A. Does not wed readily; that is, it does not stick to other metals.

Q. I see.

A. And therefore it has a very important place in
552 the making of high-speed tool material, in the sense that as the chip, the hot chip, in machining the metal, passes over the top of the hardened carbides, the chip does not tend to stick to the tantalum carbide tool, but slides over rather than sticks, thereby reducing the possibility of there being any gouging-out just behind the cutting edge, preventing the edge moving, and giving longer life; and in many instances it will stand higher speeds, especially on steels where the tendency is to stick, and on cast iron, alloy cast iron, where the combination of steel and iron has the same effect.

Now, did you want to inquire about molybdenum?

Q. Yes, I was just going to ask you about that. Tell us about that, please.

A. Because of the nature of the ore supply of molybdenum, which is largely concentrated with the Climax Molybdenum Company, we start there with an intermediate product, molybdic oxide. We start with molybdic oxide, reduce it to a metal, forming the ingots in the same way as we do

with the tungsten; swedge it; and reduce it to rods. With the molybdenum we largely draw it to fine wire, and by "fine wire" I mean wire that runs from .002 to .006 in diameter, largely used for the innermost grid winding on receiving tubes.

Q. On what kind of apparatus?

A. Radio receiving tubes.

Q. Oh, radio receiving tubes.

553 A. Yes, sir. It is also used in heat control devices, to some extent.

Q. Then you have other products, consisting of ceasium and rubidium, have you not?

A. Yes, sir, but they are minor.

Q. Those are minor?

A. Yes, sir, in comparison with the others.

Q. Now, getting back to your plant: I will read you a list of the departments in your plant, and ask you to state if I have them correctly. Wire Department; Tantalum Department; Contact Department; Tungsten Department; Chemical Department; Railway Signal Department; Machine Shop; Tool Room; Shipping; Maintenance.

A. Yard.

Q. Yard?

A. Watchman; Watch Service. That is hardly a department, though.

Q. What does the Yard Department do, Mr. Aitchison?

A. Well, there are seven and a half acres of ground there. They do everything, from unloading cars and moving stuff, to hauling things from here to there; unloading coal, and so forth; and in the boiler shop and the steam plant; they generally make themselves useful.

Q. Well now, going over this list, take the Wire Department. I presume that is where the rods are drawn into 554 wire; is that right?

A. Yes, sir. You refer to the Tantalum Department. You have got a product there—

Q. That would probably refer to the Tantalum Fabrication Department, would it not?

A. If you call it tantalum fabrication, I would say, yes. Then you have omitted the Sintering Department.

Q. We have not got that in this list, have we?

A. No, sir. You sinter the tantalum, tungsten and molybdenum all in the same department.

Q. I see.

A. Then in the Production Department, that is really a department, the department where you take and reduce them to metal.

Then how about the laboratory?

Q. Let us see if these will fit in. I have a number of separate departments here.

A. Well, it depends on whether you are going to make the common denominator of what constitutes a department, the operation or the product. If you want to make it to the operation, and forget the product, you just put it in on that basis.

Q. I think that perhaps we had better approach the problem from an operating standpoint, rather than a product standpoint; or an accounting standpoint, where you have
555 to charge certain labor to certain products.

A. We approach it ourselves from an operating standpoint.

Q. You approach it that way.

A. Yes, sir.

Q. Well then, let us start with the wire department. Is that the proper classification for that department?

A. Yes, sir. That would indicate the department in which all of the wire is drawn.

Q. How about the Railway Signals; is that a department?

A. Yes; that is an assembly of miscellaneous items, such as rectifiers, transformers, and things that relate to Railway signals; telephone battery equipment.

Q. Now, the Swedging Department is where all of the products are reduced from ingots to rods; is that right?

A. Yes, sir. Then the Rolling Department would be one.

Q. Yes, I was just coming to that; the Tantalum Rolling Department.

A. Well, we roll tungsten.

Q. You also roll tungsten?

A. (Continuing.) We roll molybdenum, and we roll tantalum.

Q. So then we can just call that all the Rolling Department; is that right?

A. Rolling Department.

Q. All right. Then we have the Fabricating Department, in which tantalum is fabricated. Is there anything else?

556 A. I think I would go beyond that, and say Tantalum Fabricating. You talk about contacts; that is fabricating; and the assembly.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley): Mr. Aitchison, do you have over these different departments, foremen; a foreman for each department, or a superintendent for each department?

A. No.

Q. How are they distinguished from one another, from the point of view of the management, in conducting the plant, or from the point of view of the duties of the men in the plant?

A. We have a limited number of foremen.

Q. How many foreman do you have?

A. There are eight of them, I believe,—eight or nine.

Q. Eight or nine?

A. Yes, sir, and then whenever you find three men working together, one of them is a kind of straw boss, although he is on the hourly payroll, called a leading workman.

Q. Would you consider all of these departments which have been mentioned here, to be in general component parts of the Production Department of your entire plant?

A. Yes, sir.

Q. Then in addition to those, you have your office force of clerical workers?

A. Yes.

557 Q. And then in addition to that, you have your force of—

A. Engineers.

Q. Supervisors—yes, engineers. And then you have supervising managerial employees, I suppose.

A. Yes, sir.

Q. Then what else do you have—engineers, you say?

A. Engineers.

Q. What do the engineers do?

A. Well, practically all of our stuff is made special, and so we have engineers to draft the blueprints, and check the customers' prints; and many times originate and design applications.

Q. And do they work apart from the rest of these departments that you have spoken of?

A. They work in a separate department.

Q. A separate department entirely?

A. Yes, sir.

Q. Is there much difference between these departments, the Wire Department, the Tantalum Department, Contact Department, Railway Signals, Shipping and so forth, which you have mentioned, as to geographical location?

A. Location?

Q. Yes. Do you have certain rooms for example which are used by one department, and certain rooms by another, or are they all in large rooms, with easy geographical con-
558 tact between them?

A. No, I think that they are fairly readily distinguishable one from another.

Q. Do you transfer men from one department to another?

A. Sometimes.

Q. Is there any particular difference in the rates of pay as between one department and another?

A. We have no standard fixed rate by departments, and when I say that we transfer men from one department to another, I mean that we have always followed this practice for example: if we get slow rather than lay off a lot of the older men, we try to keep the older fellows busy, and lay off the newer ones; and in that way one man might be working on a reduction furnace eight months, and then because of slackness, he would have to work in some other department.

Q. I see.

A. (Continuing.) But he would take the same rate, regardless of where he is.

Q. Is there any outstanding difference in skill as between the different departments, or does it depend more upon the nature of the individual work that the individual man performs?

A. Oh, I think there is a very great difference in skill, yes, sir.

Q. And how does that apply? That is, do you mean
559 that the Yard Department, for example, would include largely laborers.

A. Yes, sir.

A. And the Maintenance Department would include men who keep the machines and so forth in order?

A. Carpenters.

Q. Carpenters?

A. Steamfitters, electricians, and occupations of that kind; and millwrights.

Q. What are your more skilled departments?

A. Well, that is a little bit difficult to describe, in the sense that anybody who works in the Chemical Department has to know when to turn a valve off because the job is done, and not simply because it is half past eleven.

Q. I see.

A. And then in the Sintering Department, working at such tremendously high heats, you have got to have fellows who develop a sort of sixth sense, as to when there are cycles of current that are disturbing their operations. Then when you get into the Contact Department, where they handle these things we have been talking about, .156 in diameter, where we are going to try to place a little contact .156 in diameter, and a thin piece of copper wafer, 1/20000ths thick, on top of the screw, and get them in the center, that takes another type of skill.

560 Q. Yes.

A. Then when we get into wire drawing, where specifications are held as closely as ours are,—for example we are permitted up to 3 per cent out-of-round, and 3 per cent out-of-round on something starting at .002 is not very much; and the stretch is controlled,—a stretch of not less than 1⅝ths inches, or not more than 1⅞ths inches.

Q. Now, you have eight or nine foremen for approximately thirteen departments, I would gather from your testimony. That means, does it, that one foreman will have charge of two departments?

A. Yes, sir.

Q. And does he consider those two separate departments, over which he is the head, or does he consider them as just one group of workers who are under his supervision?

A. Oh, I think that they think more of them as a group of workers. A group of workers, I think, would be the way they would regard them.

Q. And you consider this entire group as your production unit?

A. Yes, sir.

Q. Now, will you give me an idea as to how your pay runs in these different departments. For example what are some of the departments that pay the least, and what are some of the departments that pay the most, and which

561 are on an hourly basis, and which are not?

A. They are all on an hourly basis.

Q. Well, for example, what do your laborers get?

A. I think they start at 40 cents per hour,—or, no. I believe we start the men at 50 cents per hour.

Q. The men?

A. Yes, sir.

Q. (By Mr. Walsh): Laborers?

A. Yes, sir.

Q. (By Trial Examiner Dudley): Male laborers?

A. Yes, sir.

Q. And then how do your laborers increase, as to rates of pay?

A. Well, there are some—

Q. (Continuing.) For instance, they start at 50 cents, and go up to how much, as laborers?

A. Well, that depends on the nature of the job. We have some people who are drawing 90 cents, and better.

Q. As laborers?

A. Oh, no, no.

Q. I mean laborers.

A. Common laborers?

Q. Yes.

A. 60 would be the top.

A. 60 cents?

562 A. Yes, sir.

Q. And what would be some of the other classifications?

Mr. Swiren: If the Examiner please, I have been checking these over, and I think that there are some departments that have not been specifically mentioned. For the sake of getting the record in proper shape, I would like to suggest, unless Mr. Walsh has some objection—

Mr. Walsh: I was about to rearrange my department structure here.

Mr. Swiren: I do not think that the Stock Room, or the Shipping Department, have been mentioned.

Mr. Walsh: Perhaps not.

The Witness: There is an inspection department there also.

Mr. Swiren: We will get to that. Just let me call off the ones that I think are missing, so that we will get the list complete.

Q. (By Mr. Swiren) There is the Stock Room; that is right, is it not?

A. Yes, sir.

Q. Shipping Department.

A. Yes.

Q. Wire Inspection Department.
A. Yes.
Q. Headers & Screw Machine Department.
563 A. He put that all under the Machine Department.
Mr. Walsh: Machine shop.
Q. (By Mr. Swiren) Well, that is separate from the Tool Room, is it not?
A. Yes. The heading machines are a separate department.
Q. And the disk cutters and set-up section constitutes a department, does it not?
A. Yes, sir.
Q. Contact Department.
A. Yes, sir.
Q. Contact Inspection Department.
A. Yes, sir.
Q. (By Mr. Walsh) What is the distinction between the disk cutters and the contact operation?
A. The disk cutters do nothing but slice off these wafers.
Q. (By Mr. Swiren) And then the set-up people put them on?
A. Yes, the Contact Department.
Mr. Walsh: I see.
A. (Continuing) They get the disks and the screws and put them together.
Q. (By Mr. Walsh) Those would all fall then within the general classification of Contact Department, would they not?
A. Yes, sir.
Q. Under the operations within the Contact Department.
A. That is what I had in mind when I said that if you
564 are going to class it by product, it is all contact; but if you are going to class it by operation, the man who makes the tack, although he is making it for contacts, is not performing a similar operation to the operation of slicing off the end of a rod.
Q. (By Mr. Swiren) Then there is another department which has been mentioned, but not described, and that is the Laboratory.
A. Yes.
Q. I think it would be helpful if there was a description in the record of how the Laboratory participates, if at all, in production.
A. Well, you can readily see, from the nature of the metals that we handle, and the temperatures at which we work, and the nicety of detail that we must observe, the inspection and

control of fine factors of that kind must be left in the hands of the laboratory, where there is an opportunity to use some judgment, based on what the material is intended to do, or what it is to be used for. A tantalum sheet that is suitable for a spinneret is a very high quality sheet as compared to what we would sell as a plain tantalum sheet; so much of the inspection of the material, power and bars, is handled through the laboratory. If any problem develops, where the bars are becoming hard or soft, or large-grained or small-grained; or wire is short of stretch; or plating does not
565 stick, or something else, their job is to correct that.

Q. (By Mr. Walsh) Now, of course, such a man is a technically trained man, who is able to find the defect, and also able to find the answer to correct it.

A. Yes, it takes either a metallurgist or a chemist, to correct it, rather than the man on the job.

Q. And you have a number of chemists, and a number of metallurgists, I take it.

A. There are 18 employees in the laboratory.

Q. 18 in the laboratory.

A. Yes, sir.

Q. All of whom are technical men,—are they not?

A. Yes, sir.

Q. And they supervise—or in fact control the production?

A. They control the production.

Q. Rather than producing themselves.

A. Yes, sir.

Q. Except in an emergency, that is.

A. Yes, sir. Except for the laboratory, the rest of it would not run.

Mr. Walsh: I understand.

Q. (By Trial Examiner Dudley) Mr. Aitchison, you have testified that your male laborers get 50 cents to 60 cents per hour.

566 A. Laborers?

Q. Male laborers.

A. Yes, sir.

Q. Now, what do some of the other classifications receive?

A. Do you want the extreme; that is do you want the other side of it?

Q. I just want to get the complete picture.

A. Well, in the screw machine operations, they receive 92 cents, and 90 cents. There are just two men.

Q. 92 and 90 cents per hour?

A. How is that?
Q. That is 92 and 90 cents per hour?
A. Yes.
Q. (By Mr. Walsh) There are only two screw machine operators, is that correct?
A. Yes, sir.
Q. Now, how much do the men employed in the Chemical Department get?
Mr. Swiren: Mr. Walsh, if you will tell us what you want we will prepare a schedule for you.
Mr. Walsh: All right. Maybe that would be helpful.
Mr. Swiren: I think that would be much easier and more practical.
Mr. Walsh: Supposing we do this: supposing you furnish us with a schedule showing the wage rates in the Wire
567 Department—
The Witness: Do you mean, the range of wage rates?
Mr. Walsh: Yes.
The Witness: All right.
Mr. Walsh: For instance, ranging from 60 cents, to 70 cents, or whatever it is.
Mr. Swiren: You want the range.
Mr. Walsh: Yes.
Mr. Swiren: All right.
Mr. Walsh: Also the wage rates in the Railway Signal Department; the Swedging Department; the Tantalum Rolling Department—
The Witness: Rolling?
Mr. Walsh: Rolling, and also Fabrication.
The Witness: Tantalum Fabrication.
Mr. Walsh: And the Tool Room; and Machine Shop.
The Witness: Well now, let me see. By "Machine Shop" do you mean the screw machine operators, tool makers, and machinists?
Mr. Swiren: Headers.
Mr. Walsh: I do not know how to break them down.
Mr. Swiren: That is what we call the Header & Screw Machine section.
Mr. Walsh: Also the Chemical; Sintering; Shipping; Stock Room; Tungsten Cutting; Contact Department—
568 The Witness: That is, the assembly, and various operations—inspection?
Mr. Walsh: Yes, assembly, inspection and so forth; crowning, side-grinding, or whatever that operation might be.

Q. (By Mr. Walsh) Now, we have pretty well covered all of the departments, have we not?

A. I think so.

Q. I have not skipped any, have I, Mr. Aitchison?

A. I do not think you have.

Q. I just do not want to miss any.

A. That is a composite of them, I believe.

Q. Then you will furnish us a schedule, please, showing the range of wage rates in these various departments; and if I have skipped any, I will ask that you please fill in the gap. That will be helpful to us.

A. Incidentally, I might say that your range depends on the skill of the people.

Q. Yes.

A. And the nature of the operation.

Q. Many of these operations, I take it, are piece operations, are they not; paid by quantity production?

A. No.

Mr. Swiren: No. You asked that before, and he said it was on an hourly basis.

569 Mr. Walsh: How is that?

Mr. Swiren: You asked that question before and the answer was "hours."

Q. (By Mr. Walsh) All hourly pay?

A. Yes.

Q. All right. Now, your company sells its products through salesmen, does it not?

A. Well, they are more engineers, sales engineers, than they are salesmen.

Q. I see. Well, would you tell us how the sales of the company are effected?

A. Well, because of the special nature of the products, in many instances we really have to go into plants and develop a use for them.

Q. I see.

A. Or put them in, in competition with other materials. As an illustration, if the Ford Motor Company is working on a new distributor system for next year, the next model, we have to furnish material that will stand up under their new electric system, with whatever changes they make. We make different grades of material, different types of material, and therefore the man you might call a salesman of contacts, is really an expert on ignition, or circuits; and he examines the device, and suggests several types of material that perhaps

will work, or perhaps suggest improvements in the
570 ignition device, that will relieve the severity of the gas on the contact points; larger condenser capacity, less employment of resisters, and so forth. There just happen to be 32 variables in the average system; and that is one reason why the world is not flooded with people who understand ignition systems. Then if we are successful, when the new models come out we are specified in the blueprints as a supplier. Then, of course, we have got to keep in touch with the purchasing agent, and the Engineering Department, to see that we get some business.

Q. Now, you do not have any sales office, or sales agents, do you, except for sales of the products of one of your subsidiaries?

A. Well, we have sales representatives, a number of sales representatives in connection with the sale of railway signal devices to the railroads.

Q. I see.

A. There are a number of purchasing departments in Cleveland, and we have a commission arrangement with the man in Cleveland, to keep in contact with those departments; and another one in the east keeps in touch with the Pennsylvania, Baltimore & Ohio and Lehigh Valley; and then we have one on the Pacific Coast who keeps in touch with the Santa Fe. But that is a very minor part of the business. We do have those people, but they are all on commission.

571 Q. They are on a commission basis.

A. Yes, sir. Otherwise we sell everything direct from North Chicago. We will use everybody on applications; myself, in some cases; the doctors in charge of the laboratory; and the sales engineers; in some instances we take men out of the shop who are experts on tantalum, and send them to review the application. After all, if somebody is going to put a lot of money into expensive equipment, we have got to be pretty sure that it is going to work.

Q. Surely. Now, what advertising methods do you employ?

A. We have our own advertising man, working on our payroll.

Q. You advertise, I suppose, in trade journals?

A. Principally in trade journals, plus the production of catalogues and some booklets.

Q. And putting out such other information as you find desirable?

A. Principally describing the various uses of the products, trying to get the Engineering Department interested, of different plants. For example, we do not know what is going on in a large plant, but if we could get their scientific people interested in tantalum, they perhaps would keep that metal in mind for some of their more severe operations. It is mostly that sort of information, rather than sales.

Q. You are dependent, are you not, Mr. Aitchison, upon the materials which you receive from states other than
572 Illinois, for the successful manufacturing processes in your plant?

A. Well, some materials can be purchased almost anywhere, it seems, if the price is right. Other materials come from a particular place; tantalum ore for instance comes from one deposit in Australia.

Q. Without the materials which you find it necessary to procure in states other than Illinois, and in foreign countries, you could not conduct the operations of your business, could you?

A. Well. I do not know how far we could go, if we were forced to resort to it; but I think that I can buy spot tungsten in Chicago, or buy it in New York or elsewhere, imported from China or Australia. I think I could buy it in Illinois.

Q. Nevertheless there is no tungsten mined in Illinois, is there?

A. Not that I am aware of.

Q. And there is no molybdenum mined in Illinois, is there?

A. No.

Q. And there is no tantalum mined in Illinois, is there?

A. I wish there were.

Q. It is also true, is it not, Mr. Aitchison, that you send, as we have stipulated, I believe 70 per cent or approximately that amount of your materials, manufactured, to states other than Illinois, and in fact mostly all over the world?

A. As an approximation—

573 Q. Yes.

A. —that is what I would say. It might be 65 per cent, or it might be 75 per cent; but that is the best guess that I can give you. And I give it as a guess because we have no occasion in operating the business to summarize the figures by states or countries.

Q. I understand.

A. The money of a fellow in Indiana looks just as good to us as that of anybody else.

Q. (By Trial Examiner Dudley) Mr. Aitchison, you mentioned a while ago that there are 18 employees in the laboratory.

A. Yes, sir.

Q. Are they on an hourly basis, or a salary basis?

A. They are on a salary basis.

Q. You do not consider them as a part of your Production Department, then, do you?

A. Well, it depends on how you look at it.

Q. Well—

A. We cannot run without them.

Q. And you could not run without yourself, or without your managerial or office people either, could you?

A. Oh, they could get along without me pretty well, I guess.

Q. But in your own thinking, you do not consider them as a part of your production employees; you do not consider them as in ' ıded there at all; is that correct?

574 A. That is a hard question to answer.

Q. Well, in your plant operations, do you consider them as more analogous to your engineers—

A. No.

Q. (Continuing) —who are also on a salary basis; are they not?

A. Except that the engineers have practically nothing to do with the production of the product; but if we want to produce wire to some very, very exacting specifications, which happens in many instances, we send a laboratory man right out of the laboratory, or send men right out of the laboratory, and have them draw it themselves.

Q. And your laboratory men sometimes act as salesmen in contacting prospective customers, do they?

A. Well, where the prospective buyer has questions to ask that the average sales engineer cannot answer, we would have to call in the technical people to discuss it.

Q. I see.

A. When we go into a plant like Du Pont, for example, we do not deal with the purchasing department; they usually cannot pronounce the names of the products that we sell; and five minutes after you get in there, he gives you a pass to Dr. So-and-so. That is a poor place to send in a fellow who has had no technical background.

575 Q. So your laboratory man would carry on that contact for you.

A. He supplies the technical information direct.

Q. I see. What is the total number of employees whom you have in the plant in North Chicago?

A. Of what date?

Q. As at the present time,—or any date for which you have the information.

A. I have it for February 17th.

Q. All right.

A. Fansteel, 311; and Vascoloy-Ramet, 69.

Q. Now, in those 311 and 69 employees, are there any included who are office help, or managerial employees?

A. Yes, sir; the 311 includes 38.

Q. 38 what?

A. Administrative and office, and salesmen; and the 69 includes 8.

Q. Are those 38 all on a salary basis?

A. Yes, sir.

Q. And the balance are production employees, upon an hourly basis?

A. No.

Q. How are the balance carried?

A. Well, there are 18 in the laboratory.

Q. (By Mr. Swiren) Mr. Aitchison, I think it would help in that connection if you would state how many
576 of those 18 are supervisory men in the laboratory, and how many are just laboratory workers?

A. Well, there are two supervisory men. We have two divisions, one relating principally to tantalum, and the other one relating to all of the other general matters. Then there are 7 in the engineering department.

Q. (By Mr. Walsh) Seven?

A. Yes. Then you take the foremen, and add to them the plant superintendent, and the assistant plant superintendent.

Q. Those would not be included in the laboratory, would they?

A. Who?

Q. The foremen and the plant superintendent.

A. No, they would be in the additional 11 that I mentioned.

Mr. Walsh: I see.

Q. (By Trial Examiner Dudley) 11 foremen?

A. No, including the superintendent and his assistant.

Q. (By Mr. Swiren) Are any of these hourly foremen of the type you told us about, where one man works with two other fellows?

A. I think not.

Q. You are talking here about real foremen?

A. We are talking about real foremen, salaried foremen.

Q. (By Mr. Walsh) Salaried foremen?

A. Yes.

577 Q. Now, let me see if I have this straight. I have 38 administrative officers, sales forces, and office forces.

A. Yes, sir.

Q. 18 laboratory employees.

A. Including the two directing heads.

Q. Pardon me?

A. That includes the two directing heads.

Q. Including the two directing heads.

A. Yes.

Q. Does that 18 also include the 7 in the engineering department?

A. No, sir, that is separate.

Q. That is extra.

A. Yes, sir.

Q. Then there are 11 foremen, a superintendent, and an assistant superintendent.

A. Yes, sir.

Q. Now, are those all persons working on a monthly or weekly salary?

A. Let me see. I am not certain about the watchman.

Q. How many watchmen do you have?

A. That will come in the breakdown. We will give you the number of watchmen.

Q. That is your record as of February 17th, I believe you said.

578 A. Yes, sir. I am putting down two more divisions here. We have a fireman on a monthly basis,—one watchman and one fireman on a monthly basis; and the rest are on an hourly basis.

Mr. Walsh: That will help us out.

Q. (By Trial Examiner Dudley) Then are all the balance of the employees—

A. I think they are on an hourly basis.

Q. —on an hourly basis.

A. Yes.

Q. In what you call the Production Department of your plant.

A. Yes, sir.

Q. How would the 69 employees break down, of the other corporation?

A. There are 8 office and administration. But I—I do not have the exact figure, but I think there are either 4 or 5 on a monthly basis, who are foremen.

Q. (By Mr. Walsh) Foremen?

A. Yes, working foremen.

Q. (By Trial Examiner Dudley) And the balance?

A. Hourly.

Q. Hourly production employees?

A. All production, yes, sir. You see, I might explain that Vascoloy-Ramet leans very heavily on Fansteel for all laboratory work, inspection work, for the production of car-
579 bides. Their gases are piped over from Fansteel, so that there is no need of duplicating an organization of that kind.

Mr. Walsh: No.

A. (Continuing) So the ones that I mentioned serve both companies.

Q. (By Mr. Walsh) Well, the Vascoloy plant is in one of the buildings within the Fansteel physical set-up, is it not?

A. Yes, sir—one of the 15 buildings that I referred to.

Q. Yes. And the work that is carried on by Vascoloy is not unlike in a general way the work that is carried on by Fansteel, is it?

A. Well, Fansteel produces the carbide powders, and the Vascoloy-Ramet Company takes the powders and prepares mixtures from them, and from the mixtures, they press them, not into large ingots, but into either small slabs, or individual dies or tool tips; and they sinter those tips; and then they sell those tips either as tips for others to attach to the tool, or they make a rough shank, and just attach them, braze them on, and let the other man, the customer, make the finished tool out of them; or they will take the tip, and attach it to the shank, and make the finished tool direct.

Q. I see. So the actual operations in Vascoloy-Ramet consist, then, of making up the powdered form into the shape in which they desire it to be, when it is finished?

580 A. They sinter it the same as Fansteel does, except, as I say, it is in smaller shapes.

Mr. Walsh: I see.

Q. (By Trial Examiner Dudley) Mr. Aitchison, over the period of, broadly speaking, last July until the present time, have there been any great variations in the number of employees, or has the number remained fairly constant?

A. No, sir; I believe that they have been increasing steadily.

Q. Increasing?

A. Yes, sir.

Q. Well now, let me see. Between the two corporations here, we have a total of 380 employees.

A. Yes, sir.

Q. Now, how many are there today?

A. I think it is 402, today.

Q. 402.

A. Yes.

Mr. Keele: It was 400 the other day.

Mr. Swiren: That, of course, excludes the jobs that were abolished, that were in existence at the time.

The Witness: Yes.

Q. (By Trial Examiner Dudley) How is that again?

A. There were 380, and there are 402 now; and I would guess that a year ago there were approximately 300.

581 Q. (By Mr. Walsh) In the two plants?

A. Yes.

Q. Your records of course would properly reflect that, would they not?

A. Certainly.

Q. (By Trial Examiner Dudley) Has the growth been steady?

A. You understand, that is an approximation.

Mr. Walsh: Yes.

Mr. Swiren: The Examiner asked a question.

Q. (By Trial Examiner Dudley) Has the growth been steady, or otherwise, Mr. Aitchison?

A. The per cent?

Mr. Swiren: The growth.

Q. (By Trial Examiner Dudley) The growth, from 300 to 400, within a period of one year?

A. Oh, I think it has been pretty steady since early in 1936.

Trial Examiner Dudley: Do you have any other questions along this line, Mr. Walsh?

Mr. Walsh: No, I believe that is all at this time.

The Witness: Is it permissible to volunteer the statement that the business first started in 1907?

Mr. Walsh: 1907?

The Witness: Yes.

582 Mr. Walsh: Well, you told us informally the other day of the changes that went on generally, and I do not believe it will be necessary to go over that again on the record.

Mr. Swiren: I have one or two questions.

Mr. Walsh: That is unless counsel wants to put it in.

Cross-Examination.

Q. (By Mr. Swiren) The Vascoloy-Ramet products are based primarily on patents originally procured by the Fansteel Company; is that correct?

A. Oh, yes; all worked out by Fansteel.

Q. And originally those products were manufactured by Fansteel, were they not?

A. Yes, sir.

Q. After you made an arrangement for some new patents, the Vascoloy-Ramet Corporation was organized, and took over the same organization, and carried on the manufacturing; is that correct?

A. Yes, sir.

Q. How long ago was that?

A. Well, it started in officially on October 1st, 1933, in actual production operations.

Q. And approximately two-thirds of the capital stock of that company is owned by Fansteel, is it not?

A. Not approximately two-thirds, but two-thirds is owned.

Q. Who is president of the Vascoloy-Ramet Corporation?

583 A. I am.

Q. Now, as I understand it, the direction and control of the Vascoloy-Ramet Corporation rests in the directors of Fansteel; is that correct?

A. Yes, sir.

Q. And you direct the operations of Vascoloy-Ramet out of your same office, from which you direct the operations of Fansteel; is that correct?

A. Yes, sir; and the purchasing is done by the same department.

Mr. Walsh: Just a moment. I object to this line of questioning, if the Examiner please, inasmuch as apparently it

is designed for the purpose of showing that the Vascoloy-Ramet Comporation, a Fansteel-controlled subsidiary, should be considered as part of the appropriate unit; and I know of nothing in the complaint that would cover that.

Mr. Swiren: We are trying to find out who the shop employees are.

Trial Examiner Dudley: The objection is overruled.

Q. (By Mr. Swiren) You say you have the same purchasing department.

A. Yes, sir.

Q. And do you cooperate in the making of single purchases for the requirements of both units?

A. Yes, sir.

584 Q. To whom is the shop superintendent of the Vascoloy-Ramet Corporation responsible, and from whom does he obtain his instructions?

A. From me.

Q. You mentioned a little while ago that some of the laboratory men are called in to analyze problems in connection with actual or prospective sales.

A. Yes.

Q. Do all of the laboratory men engage in that operation,—referring now to the Fansteel laboratory?

A. No.

Q. Well, about how many of the men do that work in the laboratory?

A. How many are called on to do that work?

Q. Yes.

A. Three.

Q. Who are those three?

A. Dr. Balke, Driggs, and Gwynn.

Q. The first two men whom you have named are the men who supervise, and are in charge of the laboratory, is that correct?

A. They are the directing heads of the laboratory.

Q. Turning our attention now to the Maintenance Department, as it existed on February 18th—

A. 18th?

585 Q. —or rather, on the 17th—nothing existed on the 18th.

Mr. Walsh: I move to strike that out.

Mr. Swiren: It may go out.

Q. (By Mr. Swiren) (Continuing) How was that made up? That is, what type of men did you have in that

department, from the point of view of work done and functions performed?

A. Carpenters.

Q. What else?

A. Electricians; millwrights; steamfitters; and helpers.

Q. If you did not have a Maintenance Department, could you run your shop?

A. Yes, sir.

Q. Has there been any change in your Maintenance Department since February 17th?

A. Yes, sir, we have discontinued practically all of it.

Q. How do you have the work done, when the occasion arises?

A. We contract for it on the outside.

Q. Is that type of service available on the outside?

A. Yes, sir.

Q. Directing your attention now to the Tool Room: was all of the work done in the Tool Room prior to February 17th, 1937, essential for the operation of the production unit of the company?

Mr. Walsh: That is objected to.

A. No.

586 Mr. Swiren: Just a moment, please, when counsel objects.

Trial Examiner Dudley: The objection is overruled.

A. No.

Q. (By Mr. Swiren) What type of work was not essential?

Mr. Walsh: That is objected to also, if the Examiner please.

Trial Examiner Dudley: Overruled.

A. Well, as an illustration in the hot swedging of tungsten, we use a series of steel dies, of different sizes. They have a very short life. We can have dies made on the outside by any good diemaker, in quantities; we can have it done on the outside cheaper than it was done in the old days by ourselves.

Q. (By Mr. Swiren) And are you having those dies made on the outside today?

A. Yes, sir.

Q. Have you cut down your force in the Tool Room, as the result?

A. Very much so.

Q. Other dies are being similarly made on the outside, are they?

A. Yes, sir.

Q. Do you buy any of your basic ores, such as molybdenum, tantalum of tungsten, from brokers, or through intermediaries, other than the mines?

A. Just recently we bought some Australian ore through a broker, but usually we buy it direct from the mines.

587 Q. Are there ore brokers that sell products of that character?

A. Yes, sir.

Q. If an ore broker, or ore brokers, were to sell such products from offices or warehouses within the State of Illinois, would it make it possible for you to run your operations by purchasing from them.

A. Yes, sir.

Q. Most of the ore—

Mr. Walsh: Pardon me, just a moment. Will you read that question, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Most of the ore that you have purchased in recent years for tantalum work, was mined in the Tantalite, Limited, mines of Australia; is that correct?

A. Yes, sir.

Q. And in more recent years you have been purchasing that ore from the Lady Deborah Moulden?

A. Yes, sir.

Q. You have not purchased it from the Tantalite Company, Limited?

A. No, sir, the contracts have been made with Lady Moulden direct.

Q. And if Lady Moulden were to make the contracts with you through an office in Chicago, and make delivery to

588 you from Chicago warehouses, would that prevent your operating in normal fashion?

A. Not at all.

Q. Do you buy any of your vital chemicals within the State of Illinois?

A. Yes, sir.

Q. Are there chemical factories located within the State of Illinois?

A. Yes, sir.

Q. Now, you testified a few moments ago that in connec-

tion with delicate and unusual work, the laboratory men come into the factory, and do the work themselves; is that correct?

A. Yes, sir.

Q. Is that a common occurrence?

A. Yes, sir.

Q. With respect to general operations, do the laboratory men do the inspection work?

A. Yes.

Q. Do they test materials during the course of the various processes?

A. Yes, sir, they do, at various stages of the processes.

Q. It is necessary in that connection for them to participate in actual production work in the plant?

A. Many times it is.

Mr. Swiren: That is all.

589 Mr. Walsh: I have one or two further questions.

Redirect Examination.

Q. (By Mr. Walsh) Mr. Aitchison, if you discovered a tantalum deposit in the backyard of the Fansteel plant, it would help you in your operations, would it not?

A. We did discover one.

Q. You did?

A. Yes.

Q. Was it a substantial one?

A. Very much so.

Q. Are you now using it?

A. Yes, sir.

Q. To the exclusion of the ore formerly received from Australia?

A. In some products, yes, sir.

Q. I see. How did you happen to discover that?

A. Well, we piled up worthless furnace salt for a period of twenty years, at the back of the lot; but recently we have developed a process by which we can rehandle it, and extract the remaining tantalum from it.

Q. You can get some of the remaining tantalum from it, can you?

A. Not some; all.

Q. Well, I mean, all that is left in the pile.

A. Yes, sir.

590 Q. I suppose that was the spoil pile from the furnaces; is that correct?

A. No, sir, that was the residues from natural production, from the electrolysis operation.

Q. That deposit, however, was not there as the result of—

A. A geological upheaval?

Q. Yes.

A. No.

Q. But nevertheless, you are using it now, you state.

A. Yes, sir.

Q. I see.

A. And in a very substantial manner.

Mr. Walsh: That is all.

Trial Examiner Dudley: Are there any further questions of Mr. Aitchison? I have some further questions, but I am perfectly willing to suspend at this time until after lunch.

(Thereupon, at 12:20 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

After Recess.

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: Will you resume, please, Mr. Aitchison.

ROBERT J. AITCHISON, the witness on the stand at the time of recess resumed the stand and testified further as follows:

591 Trial Examiner Dudley: Mr. Aitchison, I would like to ask you a few further questions, following out your earlier testimony of this morning.

The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) The pleadings indicate that there allegedly was a strike at the plant of the respondent beginning on or about February 17th, 1937. I do not wish to go into the strike in its general aspects at this time, but I would simply like to ask you if there was a complete shutdown of your plant at that time?

A. Yes, sir.

Q. You ceased all operations, did you?

A. In the parent company, and all subsidiaries, yes, sir.

Q. And how long was that complete shutdown in effect?

A. From the afternoon of February 17th, until about—well, we started to open on Saturday, February 27th, and we opened in a very gradual manner, and did not get back into production until the 20th of March.

592 Q. The 20th of March.

A. Yes.

Q. (By Mr. Swiren) Full production?

A. Full production.

Q. (By Trial Examiner Dudley) That is, you were completely closed from February 17th to February 27th?

A. They wert evicted on the 26th, but the gas was so bad that we could not get into the place. We got some heading machines operating on the 27th, and then on Monday—you see, that was Saturday, the 27th; and then on Monday we had a few more people in there; and then we started installing glass to replace the many broken windows on the outside; and by the time we got it cleaned up, and called them back one after another, it was March the 20th before we felt we were really running.

Q. All right. Now, during this period, then, of your complete shut-down from February 17th to February 27th, and of your partial shut-down, if we may call it that, from February 27th until March 20th, there was likewise a similar stoppage of your shipping into the plant, and your shipping away from the plant, of articles that you would ordinarily ship by means of interstate commerce, was there?

A. Yes, except for the stuff that had been ordered, and that was stopped, and on which we were accruing demurrage, because there could not be any delivery. There were some cars of stuff that were held in the yards, and there was

593 some in the express office, and other places. They backed up the packages, because we could not take them in. Then, of course, as soon as we had a chance to take them in, they delivered them; but, of course, we did not release anything to come into the plant until it could come in.

Q. I see. Generally speaking, if your plant was closed by reason of a labor controversy, or any other reason, would your shipping of goods in interstate commerce likewise cease?

A. It would except for the things that were completed, and lying in the finished stock storeroom.

Q. I see.

A. (Continuing) Which we could use to fill orders, as long as we had possession of the plant and were free to ship.

We did have some completed things in stock, you see, which, as soon as we opened up, we tried to sort out, and ship what we could.

Q. In other words, there is no point or purpose to your engaging in interstate commerce, unless you are able to operate your plant?

A. That is right.

Q. That is true, is it not?

A. That is correct.

Mr. Swiren: I would like to complete the picture.

Q. (By Mr. Swiren) From the 17th of February until the 26th of February, were you in possession of your entire plant?

594 A. No, sir.

Q. The fact is, is it not, that—

A. Not a single department of the place attempted to operate.

Q. Well, could you operate, not having possession of buildings 3 and 5?

A. No, sir; we could not.

Q. And those buildings were out of the possession of the company during that entire period, were they not?

A. They were.

Q. Did the company try to get possession of those buildings during that period?

A. We sought the aid of the properly constituted county authorities, to get them for us.

Q. And those authorities tried to help you get possession of your property, did they?

A. They tried to.

Q. But they were prevented from so doing by the men inside of buildings 3 and 5, until the 26th of February; is that correct?

A. They were.

Trial Examiner Walsh: You will bring that out later, I take it.

Mr. Swiren: I want to complete the picture, because it is my position that the interruption of operations was not due to the strike; the strike did not interrupt operations at all; but it was due to the seizure of the buildings.

595 The Witness: We cannot run without the proper atmosphere.

Trial Examiner Dudley: Without what?

Mr. Swiren: Just answer the questions, Mr. Aitchison.

Q. (By Mr. Swiren) Was there damage done to the property, equipment, and supplies of the company during the time the discharged employees were occupying buildings 3 and 5?

A. There was.

Q. And that took considerable time to repair, did it not?

A. Yes, sir.

Trial Examiner Dudley: Would you rather not bring that out when you go into the entire matter, Mr. Swiren?

Mr. Swiren: I am just showing why it was we did not get into complete operation.

Q. (By Mr. Swiren) Were there men on strike after you had reached full production, with picketing going on?

A. How was that again?

Trial Examiner Dudley: Read that question, please.

(The question was read.)

A. Picketing was going on. I do not know about the strike. It had nothing to do with our plant.

Q. (By Mr. Swiren) Did it interfere with your operations, the picketing, or other signs of a possible strike?

A. To some degree.

Q. Did it prevent you from shipping goods in interstate commerce

596 A. No, sir.

Q. Did it prevent you from receiving goods in interstate commerce?

A. No, sir.

Mr. Swiren: That is all.

Trial Examiner Dudley: What is the "it" to which you are referring, Mr. Swiren?

Mr. Swiren: Here is what I am getting at, if the examiner please—

Trial Examiner Dudley: I think I must have missed one of your questions.

Mr. Swiren: I am getting at the point that the alleged strike did not interfere with our operations, or our shipments in or out of the plant; but that what interfered with them was the fact that some men came in and took our plant away from us.

Trial Examiner Dudley: The closing of the plant, due to a labor controversy, did not stop interstate commerce?

Mr. Swiren: I do not care what the reason was—

Trial Examiner Dudley: That is correct, is it?

Mr. Swiren: I say, I do not care what the reason was that

motivated the men who unlawfully seized our plant. It was not the men quitting work that stopped us, but it was the men seizing the plant that stopped us. We could replace the men right away. That was not the problem.

Q. (By Trial Examiner Dudley) Yes, but is this cor-
597 rect, Mr. Aitchison, that as soon as the work at the plant stops, then your interstate commerce stops?

A. Well, it stopped because the key buildings in the plant were stopped.

Q. Yes.

A. We cannot operate without putting the material through its proper departments.

Q. All right. Now, I would like to have you develop, if you will, Mr. Aitchison, the background—by which I mean the historical background—of the relations between the company and its employees up to the time that we begin to get into the controversy; and then after that we will let the attorneys develop it as they may wish to do so later on.

How long have you been with this company?

A. Directly and indirectly?

Q. Yes.

A. Well, I first started in with the company as an auditor and a certified public accountant.

Q. When?

A. (Continuing) To review their records.

Q. When?

A. Commencing in December of 1915. I reviewed their records, or my office reviewed their records, for every year from December 1915 until February 1932.

Q. And then did you—

598 A. (Continuing) I was a young accountant when I started, and my specialty was plant organization and plant engineering; and I developed their cost system from time to time, and took care of their plant problems.

Q. When was it you became—vice president, was it?

A. I became vice president on February 17, 1932, at 2:30 o'clock in the afternoon.

Q. And when did you become president?

A. I think that was in May 1936. It might have been the end of April, but it was not later than the 1st of May 1936.

Q. What other managerial positions, if any, have you occupied with the company?

A. Previous to 1932?

Q. Yes.

A. I served in a professional consulting capacity, but not directly in the employ of the company.

Q. Over the period of time, as far as you know, covering the period up to September 1, 1936, were there any organizations of employees?

A. Well, based on some tax examinations that I made for the company, which took me back to its original inception in 1907, and gave me a very close insight into its entire operations, there never was any problem with the employees of the company, up to this last period.

Q. Was there any organization of employees?

599 A. No, sir, there was no organization of employees in its entire history.

Q. Had it ever had Shop Committees?

A. No, sir, it had not.

Q. Did it ever have a system of making complaints to the management, by means of Representation Boards, or any such similar procedure?

A. They had no official set-up of committees, or representatives, because ours is only a small business, and as long as I have been connected with it, since February 1917, I do not think there has been a day that I have been at the plant, but what I have spent at least a half an hour around the grounds, or in more than one part of the plant, and it has always been easy for anybody to talk to anyone, behind the machines, or in the yard, or in the office.

Q. Did the employees have Recreational Committees, or Clubroom Committees, or any such informal organizations?

Mr. Swiren: You testified "February 17th." That was 1932, I take it?

A. What are you talking about?

Q. The date you became an officer.

A. Yes. The Fansteel Social Club was formed in—I think it was 1935.

Q. (By Trial Examiner Dudley) What did that club do?

A. It promoted picnics, pingpong tournaments, card 600 parties, dances, and social activities among the workers.

Q. Is that still in existence?

A. I think so, although we have not heard from them in the last couple of months.

Q. Was it operating, or active, all during the summer of 1936?

A. Yes, sir. It handled all of the details of sponsorship

of the picnic that was held in August of 1936; the giving of prizes; the holding of card parties.

Q. At those social events did the employees invite the managerial and supervisory officials of the company?

A. Yes, sir.

Q. Did they attend?

A. Pardon me?

Q. Did they attend?

A. I attended several, and I know that other officers did. There was one or more officers represented at every one, with their wives.

Q. During this period up to September 1, 1936, were there complaints ever made by more than one person at one time regarding wages, or working conditions, or hours, or similar matters?

A. Not to my knowledge were any of those ever presented, no, sir.

Q. There were complaints, were there, by individuals?

601 A. Not to me.

Q. No complaints at all—

A. Not to me.

Q. (Continuing) —by any employees, during all of that period of time?

A. Not to me. They may have asked the foreman for a raise, or something like that, but nothing ever came to me.

Q. Not as far as you know.

A. No; and I will go beyond that, and say that recommended wage increase ever landed on my desk, that I refused.

Mr. Block: Judge Forby is here now.

Trial Examiner Dudley: We will suspend for a few moments.

(Thereupon, a recess was taken, after which the hearing was resumed in the courtroom of the Circuit Court of Lake County.)

Q. (By Trial Examiner Dudley) Mr. Aitchison, during the period up to September 1, 1935, were there ever any attempts made, to your knowledge, by any organization, or any person, to organize the employees of the Fansteel Metallurgical Corporation into a union?

A. No, sir.

Q. Did the American Federation of Labor ever make any attempts to get any of your employees to join any of its unions?

A. Do you mean, 1935, or 1936?

Q. I mean, before September 1, 1936.

602 A. No, sir.

Q. As far as you know, do any of the carpenters, or plumbers, or machinists, or any of the craftsmen employed at your plant, belong to any American Federation of Labor union?

A. Yes, sir, I know that some of them do.

Q. Do you know when they joined that union,—or those unions?

A. I do not know, but I was told that one of the carpenters had belonged to it for more than 10 years; and one of the men in the machine room belonged to the Musicians' Union for a number of years; but nothing connected with our plant, however.

Q. About how many of your employees have belonged or do belong to American Federation of Labor unions?

A. I would have to guess at that, but I would say, about a half a dozen.

Q. About half a dozen?

A. Yes, sir.

Q. Has the American Federation of Labor ever attempted to organize the employees of your plant into a union?

A. Not to my knowledge.

Q. Have the employees themselves—or had they prior to that time ever attempted to start any kind of a union?

A. Not to my knowledge—that is—

Q. What is the approximate date on which you first heard there was any attempt being made to organize the employees of your corporation, either before or after September 1, 1936?

603 A. About June or July 1936.

Q. About June or July of 1936 you heard that there was a movement on foot to organize the employees of your corporation?

A. Yes, sir.

Q. From whom did you get that information?

A. Well, it filtered in through some of the foremen, or some employee.

Q. Did they have definite information, or did they just have rumors?

A. No, it was rumors entirely.

Q. What did they say?

A. That they understood—they said that they understood that a few in the plant who had some knowledge of union ac-

tivities, were contemplating trying to organize one in our place.

Q. Did they say anything about people outside of the plant—

A. Not at that time.

Q. (Continuing) —approaching employees regarding union membership?

A. Not at that time.

Q. Not at that time.

A. No, sir.

Trial Examiner Dudley: I think those are all of the questions I have to ask Mr. Aitchison at this time.

Mr. Walsh: I have nothing further.

Trial Examiner Dudley: Mr. Swiren, have you any
604 further questions to ask at this time?

Mr. Swiren: No.

Trial Examiner Dudley: Well, Mr. Aitchison, you are excused for the time being. As you know, there are a number of questions in the pleadings which will undoubtedly come up later on, about which we will probably want a good deal of testimony from you; but we will wait until we can approach those matters in a somewhat orderly manner.

The Witness: All right.

(Witness excused, temporarily.)

Mr. Walsh: Mr. Kondrath.

Will the examiner swear this witness, please?

JOHN A. KONDRATH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Walsh: If the examiner please, I would like to ask you to explain to this witness—

Mr. Swiren: We cannot hear counsel.

Mr. Walsh: I beg your pardon. I would like to ask you, if the examiner please, to explain to this witness the question of privilege under the subpoena. Mr. Kondrath is here in response to a subpoena served upon him, and there is no one here to advise him as to his rights in giving testimony before this Board, so I would, therefore, like to have the examiner ask him whether or not he desires to claim privilege.

605 Trial Examiner Dudley: Do you mean, Mr. Walsh, the privilege that is mentioned in the Act, against self-incrimination?

Mr. Walsh: Right.

Trial Examiner Dudley: All right, sir. Section 11, paragraph 3, of the National Labor Relations Act, under which we are holding this hearing, states:

"No person shall be excused from attending and testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him, or subject him to penalty or forfeiture."

The Act then goes ahead to state:

"No individual shall be prosecuted, or subjected to any penalty or forfeiture, for, or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify, or to produce evidence; except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Now, that means, inasmuch as you are brought here on a subpoena, as Mr. Walsh just tells me, that you are bound, pursuant to your oath, to answer the questions which are asked of you by counsel, or by myself, and to answer them fully and truthfully. If you do not answer them truth-
606 fully, you are making yourself liable for perjury, as mentioned in the Act. If questions asked you call for you to give material or information which in any way might subject you to any penalty or forfeiture, you then would have, in most proceedings, the privilege given to you by law of refusing to answer. That is, normally a witness is not required to give in a proceeding testimony or evidence which later could be used against him, and subject him to fine, forfeiture, or penalty.

The Act here provides, however, that if you claim this privilege, then you still must go ahead and testify, but that you will, nevertheless, by reason of your being compelled to testify, not be, as I said before, prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which you are compelled to testify.

Is that clear, or is that too legalistic for your understanding?

The Witness: That is too legalistic, I am afraid.

Trial Examiner Dudley: In other words, it means that if the attorneys here ask you questions which call for information which might be used to convict you in some other pro-

ceeding of some crime, or some misdeed, you, nevertheless, if you claim privilege here, after claiming that privilege, must still testify, but then you will be excused from the misdeed, or crime, or whatever it was that you committed.

Mr. Walsh: Does the witness claim his privilege?

607 The Witness: Yes, sir.

Trial Examiner Dudley: All right. The witness claims his privilege, but the examiner will still ask him to answer all questions giving information subject to the provisions of the Act, and also subject to the benefits of the Act.

Mr. Swiren: Do we understand that the witness is claiming his privilege?

Trial Examiner Dudley: He answered "yes" to Mr. Walsh's question.

Mr. Swiren: He has not been asked the question yet, has he?

Mr. Walsh: Yes, and he says he is claiming the privilege.

Mr. Swiren: But that privilege does not apply to all testimony, on any subject. The claim of privilege cannot be made in bulk as to all testimony.

Trial Examiner Dudley: Oh, you can make a claim of privilege, but how far the effect of that claim goes may be a different matter.

Mr. Swiren: Well, it is the first time I ever heard of a witness being allowed to claim privilege, before he was even asked a question.

Mr. Walsh: This is the first time he has been examined before this Board.

Mr. Swiren (continuing): To know whether or not the question involves any self-incrimination or otherwise.

608 Mr. Walsh: I assume that the record shows that the witness has claimed his privilege, Mr. Examiner, please?

Trial Examiner Dudley: It does, does it not, Mr. Reporter?

The Reporter: It does, Your Honor.

Mr. Block: We do not hear.

Mr. Walsh: The examiner asked the reporter if the record shows that the witness has claimed his privilege, and the reporter stated that it does.

Direst Examination.

Q. (By Mr. Walsh) Mr. Kondrath, you are at this time in jail, are you not?
A. Yes, sir.
Q. You came over here in response to a subpoena?
A. Yes, sir.
Q. But you came voluntarily; is that right?
A. Yes, sir.
Q. All right. Now, will you state your full name?
A. John A. Kondrath.
Q. What is your address?
A. What?
Q. Your address
A. 231 South West Street.
Q. Waukegan?
A. Waukegan, Illinois.
Q. I believe you are a machinist?
609 A. Yes, sir.
Q. You were employed by the Fansteel Metallurgical Corporation?
A. Yes, sir.
Q. You worked there for about 12 years; is that right?
A. About.
Q. All right. I will ask you if you are now president of Lodge No. 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America.
A. I am.
Q. Will you tell the examiner in your own words just how this Lodge got started; tell us about how it grew up, and about the meetings that were held, and the officers who were elected?
A. Around about June 1936 there were efficiency experts brought into the plant, and everybody started talking about, that they are cutting this wage, and that wage, and that the efficiency men would go through all of the plant, and that they would cut wages here and there, in this department and that department—

Mr. Block: Now, let me interrupt a moment, if the examiner please. We would like to object to the answer of the witness, as thus far given, as not being responsive, and also containing matter which would normally be regarded as hearsay, and in the form of conclusions.

The question called for how the organization started,
610 and apparently called for its history and development;

and the witness is now relating, or attempting to relate, conversation or rumors in and about the plant, relating to unidentified persons whom he calls "efficiency experts."

Mr. Walsh: I presume, of course, counsel is familiar with the provision of this Act which relaxes the rules of evidence, and I am quite sure that the examiner is familiar with it. I think the objection should be overruled.

Mr. Block: What was counsel's statement? I did not hear.

Mr. Walsh: I say, I assume counsel is familiar with the provision of the Act relating to the relaxing of the rules of evidence which control testimony in courts of law and equity, but which are not controlling in these proceedings.

Mr. Swiren: Well, they can still be applied by the examiner, and there ought to be some limitation upon the extent to which unidentified persons can be allowed to speak third or fourth hand through a witness.

Mr. Walsh: As a matter of fact, that is not inadmissible, even in courts of law, Mr. Swiren.

Mr. Block: Oh, we do not agree with counsel.

Mr. Swiren: That is a new rule.

Trial Examiner Dudley: Let the examiner rule.

Mr. Block: Yes.

Trial Examiner Dudley: We are not, as Mr. Walsh says, bound by the normal rules of equity and law that bind or
611 control normal court procedure. We do, however, want to eliminate as far as possible irrelevant matter, and as much as possible we want to eliminate what is known as hearsay. At times, however, it may be wise to admit evidence which might normally be called hearsay, in case that should be about the best evidence or provide the quickest way of getting into a matter.

However, that does not mean that the Board would give that kind of evidence as much consideration as it would give evidence upon a sounder basis.

In this particular case Mr. Block is objecting particularly to the reference to the so-called efficiency men, I suspect, the acts of the efficiency men, and perhaps to the statements of the efficiency men; but it seems to me that the statement of the witness down to this point might well indicate the going through the plant of men known as efficiency men, which would be a fact, and which would also reveal the reasons in the mind of the witness, and perhaps of his associates, in connection with forming a union about that time.

I, therefore, will admit the testimony, but ask that the witness be as definite as he can in naming people, and in giving dates, in specific information rather than generalities.

You may proceed.

Q. (By Mr. Walsh) I think you ware talking about some time in June or July, Mr. Kondrath?

A. Well, the last part of June, these efficiency men
612 naturally were in the production department, the cutting, polishing, grinding, and set-up, among the women—

Mr. Swiren: Will you speak up a little bit louder, please?

A. (Continuing) To the best of my knowledge, the Cutting Department had some dispute over the matter first, that they was to be cut so much, and they had to produce so much more points for so much less money. I think—I am not sure—that those fellows were probably on piecework making around $6.50 to $7, and then they were trying by some method to get down to $4, and increase the production some hundred or so; but, anyway, more than what they were getting, for what they were producing; more than they were producing. Well, then, the cutters, they all knew me in the plant, that I belonged to the Musicians' Union; so they got to talking with me, and wanted to know how they could organize; and at about that time John L. Lewis was heard all over the United States, on the radio, that he is coming out with industrial organization; so the Cutting Department decided that they would join a union, and start an organization; and they talked it over with the Polishing and Grinding Departments; and they went around the whole plant, maintenance, machinists, and so forth.

So after the Fourth of July, we started to organize. Well, about July 7th or 8th, in the following week—not in the week of July 4th, but the following week, in the first part of the week, I was called into the office. I was called into Mr.
613 Radke's office.

Q. (By Mr. Walsh) Radke?

A. Yes, sir; treasurer of the company.

Q. (By Trial Examiner Dudley) How does he spell his name?

Mr. Walsh: R-a-d-k-e, I believe, is it not?

Mr. Swiren: That is correct.

A. (Continuing) At that time I had borrowed some money from the company, for a little bill to pay; and Mr. Radke says, "Well, I suppose you think I have called you here about that"—or something like that. "But," he says, "I want to talk something different with you." I says, "All right." He says, "There are some rumors that you are organizing the plant." "Well," he says, "you know in the American Federation of Labor Unions there is so much craft,

you will have a local for machinists, a Local for this, a Local for that, and so forth." So I says to Mr. Radke—I says, "Mr. Radke, I don't believe we want that kind of a union." I says, "Everybody hears John L. Lewis on the radio, and I believe that is the kind of union we would like to have in this company, if any; industrial organization, that is, so everybody can belong to the organization."

As a matter of fact, I knew about the craft unions a little, about the American Federation of Labor, as I was a member of it years ago in Chicago; and also being a member of the Musicians' Union.

Well, Mr. Radke says, "Now," he says, "don't take it
614 hard that we loaned you this money"—or something like that—"or that we have that against you." Well, I thanked him for that, and I says, "Well, I don't know anything right now to talk with you about the organization; I don't know whether it is going to be organized or not."

So then Mr. Radke says, "Well, if it won't be, or if it will be," he says, "I haven't got nothing to say about it."

So I went back to the plant, and then, naturally, all of the fellows, they thought that I was going to be fired, or something. In fact, before I left—

Mr. Block: That is objected to. I think at least that ought not to be included in the testimony—as to what somebody else thought. It is not based on anything that was said.

Mr. Walsh: I think it is quite competent, Your Honor.

Mr. Block: He says, "Naturally, they thought something had happened." But I do not think the rule ought to be extended to unreasonable limits here.

Trial Examiner Dudley: What the other employees might think, in interpreting such a situation, is a part of the picture in giving us the atmosphere that pervaded or did not pervade the plant, and, therefore, it is admissible.

Mr. Block: Do you mean, irrespective of how he learned that? That is, do you mean that a statement as to what somebody else thinks, should be heard by any court, and that a man should be allowed to reproduce, or to say that somebody else thought something,—not from anything that they said or did? As his statement now stands, it is "nat-
615 urally, they thought," and it does not show how he came to that conclusion.

Q. (By Trial Examiner Dudley) Mr. Kondrath, did you know how your fellow employees thought, or what they thought, by reason of what they told you?

A. Yes, sir.

Trial Examiner Dudley: Well then, it is admissible.

A. (Continuing) Before I was called to the office, if I remember right, Mr. Joseph Petraitis, and probably a couple of others, said—especially Joe Petraitis made the remark—"Now, I suppose they will get you up there, and probably hand you a few dollars or something, and you will sell us out, and you will tell them who all wants to organize." And I replied, "Don't be afraid of that." So when I got back—may I go on?

Q. (By Mr. Walsh) You may go ahead, Mr. Kondrath.

A. When I came back, they were all on edge waiting for the news whether I was fired or not; so I says, "I am not fired, boys." I says, "I am still working, and we are going to go ahead with the organization."

Well, it went on for about a week or a week and a half, and then we arranged for a meeting, about July 20th or 21st, or somewhere in that neighborhood.

Q. About July 21st—

A. Yes.

616 Q. —you arranged a meeting, is that right?

A. Yes, sir, and we set up temporary officers.

Q. Where was that meeting held?

A. That meeting was held at Slovenik Hall, Room No. 1, I believe.

Q. Was that the first meeting that you had?

A. That was the first meeting.

Q. The first regular meeting.

A. Yes, sir.

Q. Now, I will ask you whether at that time you set up any committees, and if you appointed acting officers, and things of that kind.

A. We elected temporary officers.

Q. Who were they, do you remember?

A. I was elected first, president. Whitey,—or Clarence Dreyer—we generally call him Whitey—was vice president. Edward Ruck was corresponding secretary. Carl Swanson was secretary and treasurer. Committees were appointed, so that there was one at least in each department.

Q. Do you recall who were elected trustees?

A. Trustees, I think, was DuBois.

Q. Was there more than one trustee?

A. There was, but I don't just remember.

Q. I will ask you whether you recall if Frank Zelenick

and Al Bunton were elected trustees at that time, at that
617 particular meeting?

A. (No answer.)

Q. Well, it does not make a great deal of difference. We will go on to something else.

A. Well, I don't know if all of the officers were elected at that particular meeting.

Q. Can you tell me, do you remember who was on the Grievance Committee?

A. On the Grievance Committee?

Q. Yes.

A. There was myself, Carl Swanson, Charles Warner, and Al Bunton.

Q. (By Trial Examiner Dudley) Who is the last man?

A. Al Bunton.

Mr. Walsh: Bunton.

Q. (By Trial Examiner Dudley) How do you spell it?

A. I don't know.

Trial Examiner Dudley: Mr. Walsh.

Mr. Walsh: I think it is B-u-n-t-o-n. To save time, I will read the persons whom I have found to be the first Grievance Committee—just to save a little time.

Mr. Swiren: Of course we do not know anything about this. If the union would bring in the records as we suggested in our application for subpoenas, we could tell what counsel is re-
ferring to; but we cannot agree as to who anybody
618 was.

Mr. Walsh: No.

Q. (By Mr. Walsh) I will read this list of names, and ask you whether these were not the people who were on the first acting Grievance Committee.

John Kondrath.

A. Yes.

Q. Clarence Dreyer.

A. Yes.

Q. Ed Ruck.

A. Yes.

Q. Carl Swanson, Charles Warner—

Mr. Block: Let him answer as to each one.

Mr. Walsh: If you want each one, counsel, I will give it to you any way you want.

Mr. Block: And not quite so fast, please.

Mr. Walsh: All right.

Mr. Block: Because we cannot keep up.

Mr. Swiren: Or let counsel take the stand.

Mr. Walsh: That would be real nice.

Q. (By Mr. Walsh) I will ask you, Mr. Kondrath, whether or not the following persons were elected to the acting Grievance Committee on July 21st.

John Kondrath.

A. Yes, sir.

619 Clarence Dreyer.

A. Yes, sir.

Q. Ed Ruck.

A. Yes, sir.

Q. Carl Swanson.

A. Yes, sir.

Q. Charles Warner.

A. Yes, sir.

Q. Frank Latz.

A. Yes, sir.

Q. Steve Ark.

A. Yes.

Q. Angelo Galbavy.

A. Yes.

Q. Roy Brown.

A. Yes.

Q. Stanley Grum.

A. Yes, sir.

Q. H. Bond.

A. Yes, sir.

Q. Were those officers later made permanent?

A. They were.

Q. And do you recall when that was done?

A. It was at the following meeting that we held, up at the Waukegan Hotel, to my knowledge.

620 Q. Now, that meeting was held on what date, do you remember?

A. That was in August, I believe.

Q. Do you recall what day in August?

A. Well, it was toward the end of the week.

Q. It was August 5th, as a matter of fact, was it not?

A. It was Friday, or something like that

Q. All right. Now, tell me about that meeting; what happened at that meeting?

A. At that meeting we had all of the officers take the oath.

Q. Take their oath of office?

A. Yes, sir.

Q. Yes?

A. And we had Van A. Bittner from Chicago; he came out and gave a talk. Then there was also Serain Loewe.

Trial Examiner Dudley: Who?

Mr. Block: Speak a little louder.

A. Serain Loewe.

Q. (By Mr. Walsh) Serain Loewe?

A. Yes, sir, and some other fellows from the different locals were invited for the ceremony; and our members.

Q. And the officers were installed?

A. Yes.

Q. Did anything else take place at that meeting?

A. Well—

Q. Were you taken into the union at that time?

621 A. Yes, sir.

Q. That is commonly known as receiving the union obligation; is that correct?

A. Yes, sir.

Q. All right. Now, on August the 14th did you hold a meeting at Slovenik Hall?

A. Yes.

Q. That was the next meeting after the Waukegan Hotel meeting, was it?

A. Yes, sir.

Q. Will you tell us what happened at that meeting?

Mr. Swiren: What date was that?

Mr. Walsh: August 14th.

A. That was the August 14th meeting, the next meeting. Well now—

Q. (By Mr. Walsh) I will ask you whether additional officers were elected at that time.

A. Yes, sir, there were additional officers elected at that meeting.

Q. Do you recall what officers they were?

A. (No answer.)

Q. I will ask you whether or not there was an inside guard elected that night?

A. Yes, sir, there was an inside guard, and I believe an outside guard.

622 Q. And who was elected inside guard; Fred Hensley?

A. Fred Hensley; and Paul Van Troeck, as outside guard.

Q. And John Germer was elected treasurer?

A. Yes, sir.

Q. Financial secretary was Carl Swanson; is that right?
A. Yes, sir.
Q. I will ask you if that night you received your charter from the Amalgamated Association of Iron, Steel and Tin Workers?
A. Yes, sir.
Q. All right. Now, Mr. Kondrath, what is the purpose of Lodge 66?
A. The purpose of Lodge 66 was—and is—for collective bargaining, to better the conditions of our members in the factory.
Q. It is not organized for any other reason, or for any other purpose?
A. No, sir.
Q. It has no other purpose but that; is that right?
A. Not that I know of.
Q. All right. Now, who, what persons, what people are eligible to belong to Lodge 66?
A. To Lodge 66, maintenance, shipping clerk, cutters—that is productive workers.
Q. Production workers?
623 A. Production workers; machinists, and other laborers.
Q. And those persons working only for the Fansteel Company; is that right?
A. Yes, sir.
Q. Do you admit to membership any persons working for any other companies?
A. No, sir.
Q. Do you admit to membership any persons working at the Vascoloy-Ramet Company?
A. No, sir.
Q. Although that company's plant is in the same yard as Fansteel,—is it not?
A. It is outside the fence.
Q. Oh, it is outside the fence?
A. Yes, sir.
Q. You do not—or, do you admit the clerical workers of the company, the office help?
A. No.
Q. And of course the foremen and laboratory workers are not admitted to membership.
A. No, sir.
Q. Now, when did you first join the union, Mr. Kondrath?
A. I joined the union in July.

Q. 1936; is that right?
A. Yes, sir.
624 Q. All of the members of your union worked for the Fansteel Company on an hourly pay basis; is that right?
A. Yes, sir.
Mr. Walsh: You may inquire. Any one of the three counsel may inquire.
Mr. Swiren: Pardon me?
Mr. Walsh: I say any one of the three counsel may inquire.
Mr. Swiren: You are very courteous.
Mr. Keele: His testimony was that all of the members worked on an hourly basis?
Mr. Walsh: Pardon me?
Mr. Keele: His testimony was that all of the members worked on an hourly basis?
Mr. Walsh: Yes.
Mr. Keele: May we have just a moment, your Honor?
Trial Examiner Dudley: Yes.
(A short intermission followed.)
Mr. Keele: No cross-examination.
Trial Examiner Dudley: No cross?
Mr. Keele: No cross.
Trial Examiner Dudley: Mr. Kondrath, I want to ask you a few questions on some points that I am not very clear about.
The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

625 Q. (By Trial Examiner Dudley) First with regard to the meeting on August 14th, 1936, at which you testified there was an election of an inside and outside guard, a treasurer, a financial secretary, and so forth.
A. Yes, sir.
Q. You stated that you were received at that time into the union.
A. Yes.
Q. And assumed the union obligation.
A. Yes, sir.
Q. Do you mean that at that time your own group became a union, formally and finally, a permanent union instead of a temporary union; or do you mean that at that time you received a charter from some larger organization, such as the American Federation of Labor, or the C. I. O., which you mentioned?

A. It really was both.

Q. Did you on August the 14th get a charter, or did you apply for a charter?

A. It was along about that time, at one of those meetings, that the charter was presented, but I can't just recall which meeting it was at.

Q. Do you have a charter now?

A. Yes, sir.

Q. From whom?

A. The Amalgamated Association of Iron, Steel and
626 Tin Workers of America.

Q. I see. You are not sure as to exactly when it was that you got your charter, though?

A. I am not real sure when it was we got the charter, no, sir.

Q. Do you know the date of that charter?

A. I don't believe I do know the date, no.

Q. You testified, I believe, that you do not admit to membership in your union, laboratory workers, or members of the Laboratory Department of the factory; is that correct?

A. That is, laboratory workers that are—that have something to do with chemicals; that is, like a doctor of chemistry, or so; but there were a few fellows working out of the—in that part of the laboratory, that were entitled to membership.

Q. They were entitled to membership?

A. Yes, sir. They were working on furnace and production work there.

Q. They were working on furnace and production work.

A. Yes, sir, and on tantalum.

Q. What?

A. Tantalum.

Q. On tantalum.

A. Yes, sir.

Q. They were assistants?

627 A. Yes, sir.

Q. Were they more like,—or, was their work more like that of a laborer—

A. Yes, sir.

Q. —than it was that of a doctor or professor?

A. Yes, sir.

Q. The plant has, as I understand it, a number of people whom they call engineers, who work largely in drawing specifications, and making blueprints for various products which the company will make and sell.

A. Yes, sir.

Q. Do you admit those engineers to membership in your union?

A. No, sir; they are outside the fence.

Q. They are outside the fence.

A. Yes, sir.

Q. You testified at the beginning of your testimony, as I understood it, that at the time these socalled efficiency men went through your departments, and particularly through the cutting department, those who were paid approximately $6 to $7 on a piecework basis were afraid that their wages were going to be reduced?

A. Yes, sir.

Q. Were people paid on a piecework basis at that time?

A. They were.

Q. How long have people been paid—or, how long since then were people paid on a piecework basis in that factory?

628 A. In that particular department?

Q. Yes.

A. Well, I don't—

Q. Did they continue to be paid on a piecework basis after February 1937?

A. That I don't recall, because I didn't work in that department.

Q. I see.

A. I am in the machinists department, tool room.

Q. Do you know the names of any people who worked on a piecework basis?

A. Yes.

Q. What are their names?

A. Clarence Dreyer.

Q. Yes?

A. Thomas Fagan; and Charles Fulkerson.

Q. (By Mr. Walsh) Is that Junior or Senior?

A. How?

Q. Junior or Senior?

A. Fulkerson?

Q. Yes.

A. Senior.

Q. Senior.

A. Yes, sir.

629 Q. (By Trial Examiner Dudley) Were those men all in the cutting department?

A. There are some more in the cutting department.
Q. Well, those men—
A. Yes.
Q. —worked, and were paid on a piecework basis.
A. Yes.
Q. And not on an hourly basis?
A. To my knowledge, they were on a piecework rate. But as to this socalled efficiency man that was there, there had been some kind of a change. I believe it was presented to them by the superintendent, Mr. Luther, at that time.

Trial Examiner Dudley: I see. I have no more questions at this time. Does anyone else have any questions? If not, the witness is excused. Thank you.

(Witness excused.)

Mr. Walsh: If the Examiner please, how late do you desire to run tonight? I have plenty of witnesses available now.

Trial Examiner Dudley: I am free to go until at least five-thirty.

Mr. Walsh: I am going to ask that the Examiner explain the privilege to this next witness.

Trial Examiner Dudley: You say, you do want to claim it?

Mr. Walsh: Yes. Swear the witness, please.

630 CARL ANDREW SWANSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Walsh: I will ask the Examiner to explain to the witness the provision of privilege under this law, and ask the witness whether or not he claims the privilege.

Trial Examiner Dudley: I wish to explain to you, Mr. Witness, that the normal legal procedure provides that if a witness is asked questions which call for replies that might later be used to incriminate him, or find him guilty of some crime or misdemeanor or wrong, he can ordinarily refuse to answer such questions. The Wagner Labor Relations Act under which we are operating, specifies that you must answer questions of that nature, but in this case, if you first claim the privilege of immunity, or the privilege of being exempt from punishment for any such crimes, misdemeanors or wrongs, then after you give the testimony, on being subpoenaed, you will be excused from those misdeeds, crimes and so forth.

The Witness: Yes, I wish to claim that.
Trial Examiner Dudley: You wish to claim that privilege?
The Witness: Yes, sir.
Trial Examiner Dudley: All right.

Direct Examination.

Q. (By Mr. Walsh) Will you state your full name, please.
A. Carl Andrew Swanson.
631 Q. Where do you live?
A. 1416 Lloyd Avenue; Waukegan, Illinois.
Q. I will ask you if you are at this time confined in jail?
A. Yes, sir.
Q. And you have come into this hearing room in response to a subpoena?
A. Yes, sir.
Q. And you have come of your own will; is that right?
A. Yes, sir.
Q. Freely?
A. Yes, sir.
Q. I believe that you are employed by the Fansteel Metallurgical Corporation?
A. Yes, sir.
Q. When were you first employed by that company?
A. In 1920, I believe it was; either the end of 1920 or the beginning of 1921.
Q. And what work did you do there?
A. At that time I was an oiler, belt man.
Q. (By Trial Examiner Dudley) What?
A. Belt man; repair man.
Q. (By Mr. Walsh) You later however were a millwright; is that correct?
A. Yes, sir.
Q. When did you first join Lodge 66?
632 A. July 1936.
Q. Now, Mr. Swanson, will you tell us in your own words as clearly as you can, stating dates as nearly as possible, just how the union started in the Fansteel plant, how it grew up, and all about it; just tell us all about it.
A. Well, in July one of the employees of the Fansteel Metallurgical Corporation approached me—
Q. Speak a little louder, please, Mr. Swanson.
A. I say in July 1936 one of the employees of the Fansteel Metallurgical Corporation approached me, and had

asked me if I had heard the boys talk of forming a union for collective bargaining. I said yes; and he asked me if I would be willing to join. I stated that I would be if the members would all go together, and for good purposes, and so forth. He stated that that was the intention of all of them; and so I signed. The first meeting that I attended was a kind of committee meeting.

Q. Do you recall what date that was?

A. That was in the early part of July. The organization had not yet elected officers, or anything, and it was talked of at that time I believe to pick a meeting date, and so forth. The next meeting that I attended was August 5th, 1936, I believe.

Q. And where was that meeting held?

A. In the Waukegan Hotel, Waukegan, Illinois.

Q. Will you tell us what took place at that meeting?

633 A. At that meeting the officers took the oath, and we were given talks by Mr. Van Bittner, Mr. Walsh, and there were several other speakers sent from the Central Labor Council of Waukegan, Illinois, I believe. I believe it was decided to hold our next meeting at the Slovenik Hall at that time.

Q. Now, that next meeting was upon what date, do you remember?

A. (No answer.)

Q. August 14th, to be exact?

A. I believe that is correct.

Q. Will you tell us what happened at that meeting on August 14th.

A. Well, on August 14th, why, I believe it was decided at that meeting to hold our regular meetings on the first and third Fridays of each month, at the Slovenik Hall, in hall or room—Lodge No. 3, I believe it is; and that we go ahead and form committees, select additional officers who were needed in the lodge, and to hold—

Q. Do you recall what officers were elected at that meeting?

A. I believe there were guards; I believe there were inside and outside guards; and certain trustees.

Q. You were elected to an office that night, were you not?

A. I believe so.

Q. And that office was that of financial secretary; is

634 that correct?

A. Yes, sir.

Q. Now, will you tell the Examiner for what purpose Lodge 66 was formed?

A. To represent the employees in collective bargaining with their employer, under the rights of the Wagner Labor Law of the United States.

Q. Who are eligible for membership in this lodge?

A. All employees that were working at the Fansteel Metallurgical Corporation, that had no power to hire or fire, I believe.

Q. Yes.

A. (Continuing.) But no office employees or laboratory employees or foremen, were eligible.

Q. Now, how did you go about getting members in the lodge?

A. Well, just different ones—just through our friends, and so forth; or sometimes, if you knew somebody that was in another department, that you were better acquainted with than somebody else, you would probably be asked to call upon them and ask them their views upon the subject, what they thought of it, if it was a good idea and so forth.

Q. Now, are you able to tell me, in the absence of your records, the number of members that you had in the lodge on September 10th, 1936?

Mr. Swiren: That is objected to, if the Examiner please, unless the records are produced. We have called for those records, so that the Board may well know the entire state of facts correctly.

635

Trial Examiner Dudley: Read the question to me, please, Mr. Reporter.

(The question was read.)

Mr. Swiren: I do not think it ought to be brought in second-hand.

Mr. Walsh: Unfortunately my witness has not recently been in a position to obtain the records, your Honor.

Mr. Block: Somebody has them.

Mr. Swiren: Counsel had better withdraw his question.

Trial Examiner Dudley: The witness may answer.

A. Between 86 and—

Q. (By Trial Examiner Dudley): No, the question is, are you able to tell us the number of members that you had.

A. Not—well, I would say, yes, sir.

Mr. Walsh: What is the answer?

Trial Examiner Dudley: The answer is "Yes", that he is able to tell you the number of members that they had.

Q. (By Mr. Walsh): Will you state the number of members that you had in your lodge on September 10th, 1936?

Mr. Swiren: Objection.

Trial Examiner Dudley: Overruled.

A. 86.

636 Q. (By Mr. Walsh): Mr. Swanson, how many persons employed at the Fansteel Metallurgical Corporation were eligible to belong to Lodge 66 on the 10th of September, 1936?

Mr. Swiren: That is objected to. This witness is not in a position to testify as to those facts. They are part of the corporate records, and we stand ready to produce any records that may be requested.

Trial Examiner Dudley: This witness has testified that he is a member; that he was present at the organizing meeting, the first meeting; and that he is financial secretary. He has testified as to the purpose of the organization, and the members who are eligible. He is an employee of the plant, and has been since 1920 or 1921. It seems to me he has shown a sufficient basis for being able to answer the question.

Mr. Swiren: But I do not think we ought to be called upon to speculate, if the Examiner please. We ought to have the actual facts. Why speculate as to what this witness knows? We will bring the records in.

Mr. Walsh: Of course if you want to prove it, counsel, I see no objection to that.

Trial Examiner Dudley: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: I would like to have the witness answer the question.

637 Trial Examiner Dudley: I will rule that the witness may answer the question, and if counsel for respondent wish to bring in any better information, such information will be welcomed in the testimony.

Mr. Swiren: Oh, I take it we will have our turn.

A. Not over 160.

Q. (By Trial Examiner Dudley): Not over 160?

A. No, sir.

Q. (By Mr. Walsh): Mr. Swanson, can you tell me how many members you had on September 21st, 1936?

Mr. Swiren: May an exception be noted to the entire line of questioning, so that we will not have to delay the hearing?

Trial Examiner Dudley: The record may show that an exception is noted.

A. I would say, 86.
Q. (By Mr. Walsh) 86?
A. Yes, sir.
Q. And do you know how many persons employed by Fansteel Metallurgical Corporation on September 21st, were eligible to membership in the lodge?
A. Not over 160.
Q. (By Mr. Keele) What is the answer?
A. Not over 160.
Q. (By Mr. Walsh) Directing your attention to
638 February 17th, 1937, can you tell me how many members Lodge 66 had?
Trial Examiner Dudley: What date?
Mr. Walsh: February 17th, 1937.
A. 154.
Q. (By Mr. Walsh) And can you tell me how many persons employed at Fansteel Metallurgical Corporation were eligible to membership in Lodge 66 at that time?
A. Not exactly the number, no.
Q. Could you make—could you come close to it?
A. Not over 180.
Q. Not over 180.
A. Yes.
Q. All right. Now, Mr. Swanson, after the organization of this lodge was there a Grievance Committee, a Negotiating Committee formed?
A. Yes, sir.
Q. Will you tell the Examiner about that; who was on it, if you can remember; and how the committee was made up?
A. The officers of the lodge were automatically members of the committee, and we tried to classify the departments, according to the number of employees, grouping the smaller departments together, so that each group of employees would be fairly represented upon this bargaining committee; and as the membership increased, why, we appointed more members to the bargaining committee.
Q. Now, do you recall about how many members you
639 had on the bargaining committee after you had gotten organized?
A. The last report I would say was 18 to 20 members. I think it was 18,—or 20; I am not sure now.
Q. Now, Mr. Swanson, this is not a very large shop in the way of numbers, is it?

A. No, sir.

Q. Most of the men employed are pretty highly skilled men, are they not?

A. Yes, sir.

Q. I will ask you whether or not the company suggested that the employees organize into a Representation Plan?

A. Yes, sir.

Q. Will you tell us whom they asked you to include in that plan?

A. That plan—I don't remember exactly who all it included, but it was an Employee Representation Plan.

Q. Yes. Well then, let us pass on for the moment—

Trial Examiner Dudley: May we have the date?

Mr. Walsh: Pardon me?

Q. (By Trial Examiner Dudley): About what was the date they asked—or suggested this Representation Plan?

A. Well—

Q. Do you remember?

Mr. Walsh: I will develop that a little later.

640 Trial Examiner Dudley: All right. I will withdraw the question.

Q. (By Mr. Walsh): Now, between July of last year, and February of this year, was there any other labor organization in the plant except Lodge 66?

A. No, sir.

Q. All of your members are paid on an hourly basis, are they not?

A. I think so.

Q. Lodge 66 is an industrial type of organization, is it not?

A. Yes, sir.

Q. And that is the type of organization that the employees selected, is it not?

A. Yes, sir.

Mr. Walsh: That will be all of my questions for the present. You may inquire.

Cross-Examination.

Q. (By Mr. Keele): I understood you to say that in September there were 86 members of Lodge 66.

A. Yes, sir.

Q. And that Lodge 66—you were secretary and treasurer, were you not?

A. I was financial secretary.
Q. Financial secretary.
641 A. Yes, sir.
Q. Who was the secretary at that time?
A. The recording secretary?
Q. Yes.
A. Edward Ruck.
Q. Did the lodge keep records, membership cards, or something of that character?
A. Yes, sir.
Q. Who keeps those cards—or who kept those cards at that time?
A. Well, they were kept at various places. They were kept in the office sometimes, at the Steel Workers Organizing Committee.
Q. By whom were they kept; I mean in whose custody were they?
A. They were in my custody, sir.
Q. And are you basing your statement as to the number of members of Lodge 66 on September 10th, on the cards or records in your possession, or that were then in your possession?
A. Yes, sir.
Q. Is that the way you arrive at your figure?
A. Yes, sir.
Q. Will you name the members of the lodge on September the 10th?
A. That is not possible.
642 Mr. Walsh: That is objected to.
Trial Examiner Dudley: You mean, all 86?
Mr. Keele: I would like to test out whether or not he does know.
Mr. Walsh: That is objected to.
Mr. Keele: He has made the statement that there were 86.
Mr. Walsh: I object, if the Examiner please.
Mr. Keele: We have no way of knowing whether or not that is an accurate statement, and we would like to test it.
Q. (By Trial Examiner Dudley) Well, can you list the 86 names—
A. No, sir.
Q. —from memory, now?
A. No, sir.
Q. (By Mr. Keele) Well, will you tell us exactly just how you know there were that many on that date?

A. I have counted the cards. The cards are marked, when they were initiated, and when they paid their dues.

Q. Well now, when did you—

A. (Continuing) There might have been more in the lodge at that time, but these were actual dues cards—because some of the membership cards had not been turned in; members had been signed, additional members had been signed, but the cards had not been turned back. But they was actual dues cards, by which I know these members belonged, bona fide members.

643 Q. And your statement as to the number of members of Lodge 66 on September 21st, and on February 17th, is based in the same manner—or has the same basis?

A. Yes, sir.

Q. Do you know where those cards are now?

A. No, sir; I do not.

Q. Were there any other records kept as to membership, indicating the membership of the Lodge, the number of people, and who they were, in the Lodge?

A. I couldn't say that, sir.

Q. Well, when did you last see those cards?

A. Well, it was a week and a half or two weeks ago, sir.

Q. Where were they then?

A. Slovenik Hall.

Q. Now, you say—you stated, as I understood you, that on September 10th there were 86 members of Lodge 66, and not over 160 employees of the company were eligible; is that correct?

A. That is my recollection.

Q. Now, upon what—or, rather, by what—did you determine who was eligible and who was not eligible, and how many there were eligible?

A. As far as the eligibility of a member is concerned, I believe I explained that; and the number.

Q. Well, will you explain it again, please. I am sorry, but I did not get that, as to how you determined whether they

644 were eligible or not.

A. Any man who was employed at that time by the company, the Fansteel Metallurgical Corporation, exclusive of the office and laboratory, that did not have the right to hire and fire.

Q. All right.

A. (Continuing) Who was not listed as a foreman.

Q. That was the test, but who laid down that test as to who was eligible and who was not? Who gave that test?

A. I don't know that, sir.

Q. Well, was that your rule, or was that the way you handled it?

A. That was the way it was explained to me.

Q. By whom?

A. I couldn't say that, sir. It was at one of the meetings that we had.

Q. Was there anything in the by laws to that effect?

A. We were working—I believe we were operating under a temporary set-up, with a convention to be called.

Q. Mr. Swanson, do I understand, then, from that, that the test which you have applied as to the eligibility of employees on September 10th, was a test that was given to you, or an eligibility rule that was given to you by somebody else, whom you do not recall?

A. Yes, sir; it was at a meeting, and I don't remember who explained it. It was brought up at a meeting, and
645 they explained certain rules, and so forth, that were required by the organization; but as to just who explained it, I don't remember.

Q. Now, you have testified that on September 21st there were 86 members in Lodge 66, and not over 160 employees of Fansteel Metallurgical Corporation eligible to membership.

A. Yes, sir.

Q. Was your rule of eligibility the same on that date, September 21st, as it was on September 10th?—the test you applied as to whether a man was eligible or not?

A. Yes, sir.

Q. And as to your information as to the source of that rule, or test, would your answer be the same, that you got it at a meeting, but you do not recall who gave you that formula, or test, as to eligibility?

A. Yes, sir.

Mr. Walsh: Speak up, Mr. Swanson, so that the reporter can hear you.

Q. (By Mr. Keele) As I understand it, on February 17th you stated that there were 154 members in the Lodge, and not over 180 employees of the plant of Fansteel Metallurgical Corporation, eligible.

A. Yes, sir.

Q. And you applied the same rule of eligibility in arriving at that figure of 180, as of February 17th, did you?

646 A. I don't believe that there was any change in the rule at that time.

Q. Well, on February 17th, 1937, had you learned the source of that formula, or the rule, as to eligibility?

A. No, sir.

Q. Well, as I understand it, then, that is your view of the test of eligibility, and you received it from someone else, but you do not know who?

A. Well, I don't know whether the organization had it in its bylaws or not. I believe it was at that time in the bylaws.

Q. I believe you stated that some of the men in the laboratory were eligible for membership. Did you say that, or not? I am not sure.

A. Well, I believe that some of the men were transferred to the laboratory, who were working out in the plant previously.

Q. Were they eligible?

A. They were doing production work. What we considered in the laboratory, was laboratory work, and so forth; but anybody doing anything that in any way would be considered as production work, they were eligible; but not anybody on laboratory work.

Q. Well, if men were transferred from the factory, or the production end, to the laboratory, to work in the laboratory, would they still remain members,—or would they still remain eligible for membership?

647 A. If they were doing production work.

Q. Supposing that they were transferred to laboratory work.

A. Well, if they were assigned to laboratory work permanently, they would not come under that classification.

Q. That would remove them.

A. Yes, sir.

Q. From eligibility.

A. Yes, sir; because the understanding is that the laboratory men are on monthly salaries.

Q. Now, when was the work of organizing the lodge, the organization work, carried on? Was it carried on during working hours in the factory?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. There was no talk, as far as you know, among the men with reference to the organizing, or the forming of this organization, during working hours?

A. With respect to organizing, I don't believe that there was; no, sir.

Q. You did not do any?
A. No.
Q. You are sure of that?
A. To go out and organize during working hours?
Q. Yes.
648 A. No, sir.
Q. Well, did you try to persuade anyone during working hours to join the union?
A. No, sir.
Q. Did anyone else, to your knowledge, who was interested in the organization of this Lodge 66, talk to prospective members of the Lodge who were eligible to join the Lodge, during working hours, about joining?
A. I don't know.
Q. But, to your knowledge, there was none of that done; is that correct?
A. Well,—
Q. To your knowledge?
A. No, sir. I have had men address me, and ask me if I belonged to the union, and so forth, as I was walking through their department, or something like that.
Q. And what did you do on those occasions, Mr. Swanson?
A. I told them "yes."
Q. And did you discuss the matter any further with them? Did you discuss the matter any further with them at such times?
A. Well, they might have made other remarks to me about the union at that time, as I was working, but I couldn't say for sure just what was said.
Q. You were in the Maintenance Department—
649 A. Yes, sir.
Q. —during the period September to February, were you not; that is, September 1936 to February 1937?
A. Yes, sir.
Q. So that your work required you to go from one department to another?
A. Yes, sir.
Q. Throughout the plant.
A. Yes.
Q. Did you go into practically every department of the plant in the course of your work during that time?
A. Yes, sir.
Q. Could you say whether or not you talked with men in each one of the departments of the plant during that time with reference to the union, during working hours?

A. To every man?
Q. To some men in every department.
A. No, sir; I couldn't say that I did.
Q. Well, now, as I understand it, no foremen—you stated this, as I understood you, and I just want to be sure that I am correct—no foremen were eligible to membership?
A. Right.
Q. Do you know the fact as to whether or not Mr. Bisbee was asked to join the union?
A. I believe so; yes, sir.
650 Q. He was a foreman at that time, was he not?
A. I don't know. I don't believe he was, sir; not at that time; no, sir.
Q. Well, what was his classification at that time?
A. I believe he was a rod grinder. I don't recollect just what his classification was, but I believe he was a rod grinder; and I believe he worked on special jobs, on contacts.
Q. Well, did he have the power to hire or fire men?
A. I don't believe he did, sir.
Q. Mr. Bisbee at that time was on an hourly rate of pay, was he not?
Mr. Walsh: If the examiner please, may I object to this line of examination? I desire to know the materiality of it.
Mr. Swiren: On the question of eligibility.
Mr. Keele: I am just testing—
Mr. Walsh: As to whether Mr. Bisbee was a member of the union?
Mr. Swiren: We do not have the union records. That is what we have been trying to get into court.
Mr. Keele: Mr. Walsh—or perhaps I should rather address the examiner: The purpose of it is to go into the matter of eligibility, as Mr. Swiren has said. The statement has been made, as I understand the evidence, that only men working in a certain classification were eligible. I am trying to find out, with reference to this man, whether or not they enlarged
651 the rule of eligibility. I only intended to ask him one or two further questions.
Mr. Walsh: All right. I do not want to interrupt too much.
Mr. Keele: I am not going to pursue it unduly. May I ask the question, your Honor?
Trial Examiner Dudley: Yes.
Mr. Keele: May I proceed?
Trial Examiner Dudley: Yes. The objection is overruled,

Q. (By Mr. Keele) Mr. Swanson, do you know whether or not Mr. Bisbee, at the time that he was asked to join the union, was on an hourly rate of pay?

A. I do not, sir.

Q. Now, with reference to the 86 members on September 10th: Did that include any women employees?

A. Sir?

Q. Did the 86 members of Lodge 66, which you stated was the number on September 10th, include any women employees?

A. I couldn't say right now.

Q. Well, on September 21st were there any women employees included in the membership of Lodge 66?

A. There were.

Q. Somewhere along in that period, there were?

A. There was women included in the membership, but they hadn't been—some of the cards hadn't been turned 652 in to me, and I couldn't swear whether they had been taken in at that time or not; but there was women members signed up in September at that time; I know that.

Q. How many do you recall?

A. No, I don't know.

Q. Well, on February 17th, I assume from your answers that there were women members of Lodge 66?

A. Yes, sir.

Q. Do you know how many there were on February 17th, how many women members?

A. No, sir; I don't.

Q. When you said there were not over 180 employees eligible, you were counting women employees who fell within that classification of eligibility, were you?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That will be all at this time, Mr. Swanson.

Trial Examiner Dudley: I would like to ask you a few questions, Mr. Swanson, regarding this eligibility rule.

The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) You stated that at your meetings the eligibility rule was explained by someone whom you do not recall at this time.

A. Yes.

653 Q. Was it explained to you by someone who was a member of the union?

A. Yes, sir.

Q. Who was an employee of Fansteel?

A. Yes, sir.

Q. Your lack of memory is as to which one of the group it was—

A. Yes, sir.

Q. —who explained it?

A. I couldn't recall.

Q. But you know that it was one of your own group, who explained it?

A. I heard it discussed twice. That was the first time I had heard it discussed at a meeting, one of our first meetings. Somebody spoke as to the eligibility of members. Then it was discussed afterwards.

Q. I see. Now, as to the discussions that were had as to eligibility: Could you tell me upon what they were based? That is, were they discussions of what kind of people should and should not be eligible because of rules and bylaws, or because of the nature of the work they were doing, or for some other reason?

A. Now, we considered the laboratory, the office, and the foremen, that they were not—that they didn't belong in that classification of employee representation, sir.

654 Q. Of what?

A. Or, rather, of collective bargaining, I should say.

Q. By that do you mean that in your judgment, you felt that that type of work was not the type which would fit in with the rest of you, as to such a man's desires, as to wages, hours, and such matters?

A. Yes, sir.

Trial Examiner Dudley: Are there any other questions?

Mr. Walsh: Not at this time.

Mr. Keele: Nothing further.

Trial Examiner Dudley: The witness is excused.

(Witness excused.)

Mr. Walsh: May I suggest, if the examiner please, that we now adjourn for this day? It is nearly 5 o'clock. I have some matters that I would like to discuss with my witnesses before I proceed.

Mr. Keele: That is agreeable, as far as we are concerned.

Trial Examiner Dudley: What time would counsel desire to reconvene in the morning?

Mr. Keele: 9:30, if that is agreeable to counsel and the examiner.

Trial Examiner Dudley: It is agreeable to me.

Mr. Walsh: That is all right.

Trial Examiner Dudley: We will adjourn at this time, then, until 9:30 o'clock tomorrow morning.

655 (Thereupon, at 4:45 o'clock p. m. Thursday, June 10, 1937, an adjournment was taken until Friday, June 11, 1937, at 9:30 o'clock a. m., in the courtroom of the Circuit Court of Lake County, County Court House, Waukegan, Illinois.)

659 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Friday, June 11, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock A. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Mix Swiren, Harold M. Keele, Suite 225, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

660 PROCEEDINGS.

Trial Examiner Dudley: I call the hearing to order. Are you ready to call the first witness?

Mr. Walsh: I would like to introduce, if the Examiner please, certain economic data in relation to the strikes for the year 1935.

Mr. Swiren: Will you identify them, so I can make my objections for the record.

Mr. Walsh: Yes. Mark this Board's Exhibit No. 9 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 9 for identification.)

Mr. Walsh: Board's Exhibit No. 9 for identification is a review of strikes in 1935.

Mr. Swiren: By whom?

Mr. Walsh: This is a publication of the division of industrial relations of the department of labor, serial No. R-389.

Mr. Reporter, mark this Board's Exhibit No. 10 for identification, please.

(The document referred to was thereupon marked Board's Exhibit No. 10 for identification.)

Mr. Walsh: Board's Exhibit No. 10 for identification is a mimeographed sheet entitled "Table 6—major issues involved in strikes beginning in 1936", which is an excerpt from the Monthly Labor Review of May, 1936, page 1308.

661 Mr. Swiren: May I ask what the purpose of those exhibits is?

Mr. Walsh: This is supporting economic data which is always introduced in the trial of these cases, and becomes part of the supporting economic data of the case.

Mr. Swiren: I do not think anything ought to go in here because Mr. Walsh or anybody else is accustomed to offering it. It ought to have some materiality to these issues.

So far as I have been able to determine, these have no bearing whatever upon the controversy here in question, and have nothing to do with the industry with which we are concerned.

So far as I have been able to check, none of these statements make any reference whatever either to our company or to our industry or to our community. What may happen generally around the country in the dry goods business, or in the steel business or the automobile industry cannot have any bearing on these issues.

Trial Examiner Dudley: I assume from the titles of this material, it shows the importance of settling industrial controversies and labor controversies peacefully, and the probable effect upon interstate commerce of labor controversies.

I will therefore allow both exhibits to be introduced as evidence of such information on as they may give.

(The documents referred to were received in evidence and

marked BOARD'S EXHIBITS NOS. 9 and 10 respectively.)

662 Mr. Keele: May we state more fully the basis of our objections?

Trial Examiner Dudley: Yes.

Mr. Keele: In the first place, these exhibits do not appear to have any relevancy to the inquiry at hand, as to whether or not the Fansteel Metallurgical Corporation violated the provisions of the National Labor Relations Act.

In the second place, we have no way of knowing by whom these were prepared. We have no way of knowing by whom the article referring to strikes in 1935 was prepared.

There is no guarantee as to the authenticity of the accuracy of the figures involved. It purports to have been prepared by one Florence Peterson—or rather, by the Division of Industrial Relations, Florence Peterson, chief. It purports to have appeared in the Monthly Labor Review for the month of May, 1936, Bureau of Statistics, United States Department of Labor. It has not been identified as having appeared in that publication. It has not been identified as having been prepared by the Division of Industrial Relations. That applies to Exhibit No. 9.

Exhibit No. 10 is simply a mimeographed copy which may have been picked up, so far as we know, on the streets of Waukegan. It might have been prepared by anybody. There is no guarantee as to its accuracy or authenticity, nor as to its source. There is nothing to indicate that the exhibit
663 has any pertinency to the issues involved here.

On those grounds we object to the introduction of both of the exhibits, and ask that they be excluded from the record. I believe the Examiner has ruled. I assume our objections may stand, although they have been ruled upon.

Trial Examiner Dudley: Your objections will be noted in the record, but the ruling will stand.

Mr. Keele: Very well.

Trial Examiner Dudley: You may call your first witness.

Mr. Walsh: Mr. Ruck.

EDWARD RUCK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your full name, please.
A. Edward Ruck.
Q. Where do you live?
A. 336 South Victory Street, Waukegan, Illinois.
Mr. Walsh: Mr. Examiner, I would like to have the Examiner explain to the witness his right to the claim of privilege. He is appearing here in response to a subpoena of the National Labor Relations Board.
I might state to the Examiner that he was present in the court room yesterday when you explained what that meant, and I believe he understands what it means. I believe he understands what it means to claim privilege.
664 Trial Examiner Dudley: Mr. Ruck, you heard me explain yesterday the right to privilege that witnesses have against self-incrimination. The Board, under the present law, may compel a witness to testify, but he may request and obtain the immunity specified by the Act.
Do you wish to claim your privilege?
The Witness: I do
Trial Examiner Dudley: Proceed.
Q. (By Mr. Walsh) Mr. Ruck, you were employed by the Fansteel Manufacturing Company in 1917, were you not?
A. I was.
Q. You will have to speak up louder so Mr. Swiren and Mr. Keele can hear you?
A. All right.
Q. You are an automatic screw machine operator?
A. Yes, sir.
Q. When did you join lodge 66?
A. It was somewhere around the middle of July. I don't know the exact date.
Q. Did you at one time hold an office in lodge 66?
A. I did; recording secretary.
Q. What are the duties of recording secretary, Mr. Ruck?
A. To keep minutes of the meetings, transactions, and take care of whatever correspondence there is.
Q. As the recording secretary of this lodge, did you
665 attend its meetings?

A. Not all of them.

Q. Directing your attention to July of 1936, what meetings did you attend then?

A. I believe there was one somewhere around the 21st of July, I believe.

Q. Will you tell the Examiner just in your own words the story about the meetings you attended, and the manner in which this organization grew up, as you know it.

Trial Examiner Dudley: Speak loudly enough so that we can all hear you. There are a lot of people here who want to listen to you.

The Witness: Well, along in June some time, there seemed to be quite a lot of unrest through the plant, and some of the boys got to talking about forming a union. Some of them asked me if I would join, and I said, "It is O. K. with me. If they want a union, all right."

I think it was on the 4th of July that I left on my vacation. I was gone around 10 or 11 days, or something like that. When I got back I saw one of the boys; he came to me and he says, "Well, we decided to organize into the Amalgamated Association", and he asked me if I would sign, and I signed.

The first meeting I attended, I think was around the 21st of July. It was along toward the end of July sometime. It was down at Slovenik Hall. It was at that meeting where 666 I met Mr. Adelman, and it was at that meeting when temporary officers were elected, and I was elected recording secretary at that time.

As far as the formation of the union is concerned, that is about all I know.

Q. I see. Did this organization have a negotiating committee?

A. They did.

Q. Directing your attention to September 10th, or prior to September 10th, did the negotiating committee call upon the officers of the company for the purpose of obtaining the use of the bulletin boards of the company?

A. Not in September, no.

Q. Did they ever call upon the company for that purpose?

A. They did; it was some time in August, I believe.

Q. All right. Tell the Examiner about that.

A. Well, after the meeting at which the officers had been elected, there was another meeting held at the labor hall on Washington Street, one Sunday, and the officers that had been

elected, and the committee, met there to formulate plans for a meeting to be held in the Waukegan Hotel, where the officers that had been elected would be duly installed.

It was decided to call upon the management of the company and ask permission to put bulletins on the bulletin board calling attention to this meeting. If I remember right, there was
667 myself, and Carl Swanson, Clarence Dreyer, John Kondrath; they were the ones that were picked to call upon the management at that time.

Q. Did they call upon the management?

A. They did.

Q. Were you on that committee?

A. I was.

Q. Will you tell us who you saw of the management when you called on them?

A. There was Mr. Aitchison, Mr. Troxel, Mr. Dow, and Mr. Henry.

Q. Will you tell, as near as you can remember, just what happened at that meeting?

A. Well, I think it was either Clarence Dreyer or John Kondrath was the one that arranged the meeting; I don't know with whom, although the rest of us were notified that the management would meet this committee, would meet with us at a certain time.

We went over to the office. As I said, the gentlemen I mentioned were present, and we explained that we were forming a union, and that we were applying for a charter, and the temporary officers had been elected, and so on and so forth, and asked them if they would give us permission to us the bulletin board.

Then it turned into a discussion of why a union, and why
668 not a union. It lasted a little while. Eventually we were refused permission to use the bulletin board for that purpose.

Q. I see. Was the union granted the use of the bulletin board for any other purpose?

Mr. Swiren: That is objected to, if your Honor please. There was no obligation on the part of the company to grant the use of the bulletin board or any other corporate facilities to this union.

Trial Examiner Dudley: Objection overruled; it may tend to show the attitude of the company toward unions.

Mr. Walsh: You may answer, Mr. Ruck.

The Witness: I don't know whether permission was re-

fused for any other purpose or not. There was union articles and clippings out of the newspapers and so forth put on the bulletin board at different times.

Q. (By Mr. Walsh) There were newspaper clippings put on the board, were there?

A. Yes.

Q. Now, were you a member of the negotiating committee which called upon the company on September 10th, 1936?

A. I was.

Q. Do you recall who was on that committee?

A. There was John Kondrath, Carl Swanson, Clarence Dreyer, myself, and Angelo Galbavy. I cannot recall the rest. I think there was around seven; I am not sure.

Q. Now, for what purpose did the committee call upon
669 the management on September 10th?

A. To present a contract.

Q. Who of the company did you see on that day?

A. Mr. Anselm.

Q. Did you see any other members of the company?

A. No, I don't think so.

Q. What position did Mr. Anselm occupy with the company at that time?

A. He was plant superintendent.

Q. Now, will you tell the Examiner as near as you can remember what the committee said to Mr. Anselm, and what Mr. Anselm said to the committee.

Mr. Swiren: Let us identify the man who did the talking, on the committee, in connection with that conversation.

The Witness: Well, I was spokesman for the committee that time. As near as I can remember, why, I told Mr. Anselm that he probably knew there had been a union formed, and they had decided it was time to present a contract to the company.

I handed the contract to Mr. Anselm, and I told him that that was a contract we presented for his consideration. Mr. Anselm read it through, and he said it was quite a document, as near as I can remember.

He said there wasn't anything in it that he didn't think that eventually he could grant us, except one thing, union recognition.

670 Q. What did he say about union recognition?

A. Well, I don't just recall. It seems to me he said it was the principle of the company not to recognize any outside union.

Q. Did he at that time make any suggestions about who should be on the negotiating committee?

A. I don't know, as far as suggestions are concerned. I believe John Kondrath was the man who arranged this meeting. The committee was quite large, as I remember, the original committee. The way I got it from Mr. Kondrath as that—

Mr. Swiren: We object to these statements that Mr. Kindrath made to Mr. Ruck. Mr. Kondrath is a party. He has been a witness, and probably will be a witness again according to Mr. Walsh's statement.

If he said anything to us, or to anybody on behalf of the company, he can testify about it. We have had nothing but second hand and third hand testimony, so far.

Mr. Walsh: The mere fact, if your Honor please, that the witness is testifying to what might be hearsay, does not render the testimony incompetent before this body.

Trial Examiner Dudley: The witness may answer.

Q. (By Mr. Walsh) Go ahead, Mr. Ruck.

A. Mr. Anselm made no suggestions, and made no request to the committee. As I was saying, John Kondrath was the one that arranged the meeting.

671 He said that Mr. Anselm had said that he would not—that he didn't want anybody on that committee that had not been with the company at least five years, and the committee was kind of large.

Q. What did the organization do about rearranging that committee?

A. They had a meeting in the yard during the noon hour, and it was decided to cut it down, and just take the ones that had been there five years or more.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Are you a member of lodge 66 now?

A. Yes.

Q. Are you an officer?

A. No.

Q. When did you cease being an officer?

A. Well, it was about two months ago. I was informed somebody had been elected to take my place.

Q. You were informed by whom?

A. Well, I don't just recall who it was now.

Q. You had your records, as recording secretary, in your

possession at the time you ceased to be recording secretary, is that not right?

A. Up until about two months ago.

Q. Of what did those records consist?

672 A. Just the minute book and seal.

Q. Did you have any list of members of the lodge?

A. No, sir.

Q. Did you have any information as to the number of members?

A. No, sir.

Q. From time to time?

A. No, sir.

Q. What did you do with those records when you were informed you were no longer recording secretary?

A. They were left down at union headquarters quite a while before I was informed that somebody had been elected to take my place.

Q. Where is union headquarters?

A. Slovenik Hall.

Mr. Walsh: I object; that is not material, if the Examiner please.

Trial Examiner Dudley: He may answer.

The Witness: Slovenik Hall, 10th Street.

Q. (By Mr. Swiren) Are they kept under lock and key there?

A. I don't know.

Q. Where did you put them last time?

A. I left them on the table down there.

Q. You just left them on the open table, and walked out of the room?

A. Yes.

673 Q. You did not bother about putting them away?

A. No.

Q. You do not know what happened to them since that time?

A. I left them in the custody of Mr. Swanson at that time.

Q. You left them with Mr. Swanson?

A. Yes; they were on the table.

Q. Was Mr. Swanson sitting at the table, or standing near it?

A. Well, I don't recall just where he was; he was somewhere around there.

Q. Did you tell Swanson you were leaving the records in his custody?

A. Yes.
Q. What did he say.
A. "O. K."
Q. And that is the last you saw of those records?
A. (No answer.)
Q. That is the last time you saw the records?
A. That is the last they were in my possession.
Q. Was that the last time you saw them?
A. No.
Q. When did you see them again?
A. I saw the minute book about a month ago.
Q. Where did you see that?
A. Down there.
Q. In whose possession was it at that time?
674 A. Mr. Swanson's.
Q. Did you ever see any of the membership cards of the lodge?
A. Yes.
Q. When did you see those last?
A. That is hard to say; I don't remember that.
Q. Give us your best recollection, Mr. Ruck.
A. I may have seen them that same day. I wouldn't want to say for sure.
Q. In whose possession did you last see them?
A. Mr. Swanson's.
Q. Were there also membership lists that the officers of the lodge had? Were there any other membership records?
A. Not that I know of.
Q. There were records, were there not, with reference to the payment or non-payment of dues?
A. They were all in the custody of Mr. Swanson, as financial secretary.
Q. Those were all in Swanson's custody?
A. Yes.
Q. Referring now to the conference of September 10th, in Mr. Anselm's office, what was said at that time by him with respect to the closed shop provision of your contract?
Mr. Walsh: I object, if the Examiner please, unless it is shown that there was a closed shop provision in the contract.
Mr. Swiren: This is cross-examination. He is able to
675 tell us if there was not a closed shop provision.
Mr. Walsh: Probably you had better ask him whether there was or not.

Mr. Swiren: I will conduct my cross-examination my way, if Mr. Walsh does not mind.

Mr. Walsh: I hope so.

The Witness: I do not think there was a provision for a closed shop; I am not sure, but there was a clause in there, a check-off clause.

Q. (By Mr. Swiren) There was a check-off system clause?

A. There was a check-off clause, in there.

Q. Let us put that aside for the moment, and turn our attention to the closed shop provision.

Do you know, or do you not know whether there was a closed shop provision in the contract you presented as spokesman?

A. I did present it, but I don't remember whether there was that closed shop clause.

Q. You do not know whether it was in that contract or not?

A. I don't remember.

Trial Examiner Dudley: He testified he did not think there was such a clause. He testified he did not think there was a closed shop provision in it, but he did think there was a check-off provision.

Mr. Swiren: I want to get it straight, Mr. Ruck.

Q. (By Mr. Swiren) Is it your recollection that there 676 was no closed shop provision, but that there was a check-off provision in the contract, is that right?

A. That is my recollection, yes.

Q. Then you did not discuss the closed shop possibility at that conference, is that right?

A. Well, I think there was some discussion about that. I say, if I remember right, why, Mr. Anselm looked upon that clause as a closed shop clause.

Q. That is, he—

A. There was some argument over that clause, I know that.

Q. That recognition clause you were talking about on direct examination, Mr. Anselm regarded as a closed shop clause, is that right?

A. No: the check-off clause.

Q. The check-off clause?

A. That was the way I took it, that the check-off clause was the one he objected to.

Q. Did he tell you he did not want a closed shop, and the company could not accept a closed shop arrangement?

A. Not that I remember. I remember him saying the company didn't want to recognize any outside union, or any union that had outside influences.

Mr. Swiren: I move that the latter part of the answer go out, and that the witness be instructed to confine himself to answering the questions.

677 Mr. Walsh: I believe that the latter part of the answer is pertinent.

Trial Examiner Dudley: Motion overruled.

Q. (By Mr. Swiren) You would not say, would you, Mr. Ruck, that Mr. Anselm did not tell the committee that the company would not accept a closed shop contract?

A. He said they would not recognize the union, an outside union.

Mr. Swiren: Now, will you read my question please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Do you understand my question?

A. No.

Q. You would not swear on your oath would you, Mr. Ruck, that at that conference Mr. Anselm did not say to you and the other members of the committee "The company will not enter into a closed shop agreement with the union"?

Mr. Walsh: I object to that question. It is double-barrelled.

Trial Examiner Dudley: Do you understand the question?

The Witness: I would not want to swear that, no.

Q. (By Mr. Swiren) He may have said that?

A. He may have said it.

Q. Do you recall whether Mr. Anselm told you that he thought the contract was very loosely drawn?

678 A. Yes. He said, I believe, if I remember right—his first words after he read it were, "Well, this is quite a document."

Q. What else, so far as you can recall, was contained in that contract that you presented, Mr. Ruck?

A. There was the request for recognition of lodge 66.

Q. Was there anything else in the contract?

A. There was, I believe, something about seniority rights.

Q. Was there anything else?

A. I believe there was a request for negotiations in regard to hours, wages, and conditions, and there was a check-off clause.

Trial Examiner Dudley: May I ask the attorneys if either one of them have copies of this agreement that was proposed?

Mr. Walsh: We both have copies; I have subpoenaed it, and I believe probably it will be produced. I think I should call for it at that time.

It should be produced, and it will speak for itself; let the contract speak for itself.

Mr. Swiren: Let me proceed with my cross-examination.

Mr. Walsh: I am calling for the contract at this time, in response to a subpoena.

Mr. Swiren: I ask to be permitted to continue with my cross-examination.

Trial Examiner Dudley: There is no use of asking the witness about the contents of a document, if you have the
679 document here, and can look at it and see what the contents are.

Mr. Swiren: It is his recollection with respect to that conference that I am asking about.

Mr. Walsh: I suggest that the document speak for itself.

Mr. Swiren: You opened the subject up, Mr. Walsh.

Mr. Walsh: I have also called for the contract, Mr. Swiren.

Trial Examiner Dudley: What is it you want to find out, Mr. Swiren? Do you want to find out what is in the document?

Mr. Swiren: No. I want to find out what happened at that conference.

Trial Examiner Dudley: What happened to what?

Mr. Swiren: I am trying to find out what happened at that conference; I want to complete the picture.

Trial Examiner Dudley: Suppose you develop that by conversations and discussions.

Mr. Swiren: These are just preliminary questions.

Trial Examiner Dudley: I do not see that you need to ask him about the contents of the document, when the document speaks for itself.

Mr. Swiren: If the Examiner will bear with me, I think that I will be able to show what I am trying to develop in just a few questions. It will take much less time to do that, than to have a long discussion about it.

Trial Examiner Dudley: Go ahead.

Q. (By Mr. Swiren) Did you discuss the matters of
680 hours and wages at that time?

A. I do not think so.

Q. You did not raise any question about hours and wages at that time?

A. No.

Q. Did you discuss working conditions at that time?

A. Well, I think there was a clause in there in regard to working conditions, but as I said before Mr. Anselm made the statement there was not anything in there that he didn't think he could eventually grant us, except union recognition.

Q. Did you construe that to mean he could grant you a check-off system?

A. No, because that was tied up with union recognition. If there was no union recognized, there would be no check-off system.

Mr. Swiren: Will you mark that document Respondent's Exhibit No. 4 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Respondent's Exhibit No. 4 for identification.)

Q. (By Mr. Swiren) I show you a document marked Respondent's Exhibit No. 4 for identification, and I will ask you if that is a copy of the original agreement presented by you to the company and Mr. Anselm on the 10th of September at the conference we have just been talking about?

A. As far as I can recognize it, it is a copy of the—

681 Q. Of the contract you presented to Mr. Anselm?

A. Well, I do not think it is the original, because if I remember right, the one I gave to Mr. Anselm had a cover on it.

Q. It had a back?

A. Yes.

Trial Examiner Dudley: Is that signed?

The Witness: No.

Mr. Swiren: No. I imagine if this had been signed, we would not be here today. There was no contract signed.

Trial Examiner Dudley: No; I mean, is it signed by the parties who proposed it?

Mr. Swiren: No. It just has blanks at the bottom.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) Referring to this Exhibit No. 4 for identification, that is Respondent's Exhibit No. 4 for identification, does it refresh your recollection with respect to the closed shop as a subject matter of the discussion at that conference?

A. No. I don't seem to recall any discussion on the closed shop.

Q. Look at section 6. Does that provision contain what you understand to be a closed shop provision?

A. Yes, that would be.

Q. You do not recall now whether that was discussed?

A. I do not recall any discussion on that.

682 Mr. Walsh: I wonder if counsel will read that provision into the record, so the record will indicate what section was under discussion, and exactly fhat the section was.

Mr. Swiren: I have identified the section.

Mr. Walsh: You have not yet offered it in evidence.

Trial Examiner Dudley: Do you intend to offer it in evidence?

Mr. Swiren: I do not know yet. They have called for it. I take it they want to offer it.

Q. (By Mr. Swiren) Referring again to the same section 6, the last sentence contains the provision you referred to as the check-off provision, does it not?

A. Yes.

Q. It is right there in the same paragraph, in the same section?

A. Yes.

Q. Did you say at that time that it was essential that the check-off system be adopted?

A. Well, I wouldn't say myself, no.

Q. You did discuss the check-off system, is that right?

A. Did we discuss it?

Q. Yes; you did, did you not?

A. With Mr. Anselm?

Q. Yes.

A. I just said I didn't recall any discussion on that.

683 Q. As I understood you before, you said you did not recall any discussion on the closed shop, but you did recall some discussion with respect to the check-off system.

A. Oh, yes. Mr. Anselm brought that up, and he said—now, come to think about it, I think that that was where it came up; that is where that discussion came up.

He said it would amount to a closed shop, and that if there was employees that did not want to belong to the union they would have to belong to the union.

Q. He said—

A. He said he did not think that check-off system would be fair at that time.

Q. And he said—

A. That is, as near as I can recall.
Q. Yes.
A. I can't recall the exact words.
Q. Is it your recollection that he said then that the company was not willing to compel any employee to pay dues to lodge 66 unless the employee wanted to voluntarily do so?
A. That was the way I took it, yes. That is the way I understood it.
Q. I take it that the same point of view was expressed with respect to membership in lodge 66? The company did not want to compel anybody to belong to lodge 66 unless the employee wanted voluntarily to belong to it, is that right?
684 A. There may have been something said about that; I don't recall.
Q. Was anything said about another meeting before you left that conference?
A. Another meeting with Mr. Anselm? I don't remember.
Q. Was anything said by you or the other members of the committee about withdrawing the demand for a closed shop or check-off system?
A. I don't think so, at that time. I believe there was another contract drawn up that eliminated that; I am not sure. I wouldn't say when it was drawn up.
Mr. Swiren: If the Examiner please, I move that that be stricken out, and that the witness be instructed to confine his answers to the questions I ask.
Trial Examiner Dudley: It may stand for what it is worth.
Q. (By Mr. Swiren.) At that specific meeting of September 10, you did not withdraw any of the provisions of the contract you submitted, did you?
A. No.
Q. You did not make any change?
A. No.
Q. Are you familiar in a general way with the solicitation of members for lodge 66?
A. Well, I think most of them were—
Q. Just answer that yes or no, whether you are or
685 whether you are not familiar with it.
A. Whether I am familiar with it?
Q. Yes.
A. Yes.
Q. You personally solicited members?
A. No.
Q. You did not personally?

A. No.

Q. Did you hear discussions about the union among the employees?

A. Yes; I had discussions myself.

Q. You participated in some?

A. Yes.

Q. That was a very common subject of discussion during the fall of 1936 among the employees, was it not?

A. It was.

Q. Is that right?

A. Yes.

Q. I did not get your answer.

A. It was.

Q. Did you hear any such discussion throughout the plant during that period of time?

A. My work kept me in one part of the plant.

Q. In which department were you, Mr. Ruck?

A. Up in the machine shop, on the automatic screw machines.

686 Q. Did you hear that discussion in the machine shop?

A. Oh, yes; you would hear some.

Q. Two men would be standing next to each other at work, and the subject would come up and be discussed?

A. Yes.

Q. In the course of the discussion, the question of whether or not a man ought to join was sometimes discussed, was it not?

A. I presume so. I worked with my buddy. We worked together for years; that is what we talked about, so I imagine they did too?

Q. You assume the others did the same thing?

A. I assume that; I am not positive.

Q. Men from the maintenance department would come through your department from time to time, would they not?

A. Yes.

Q. There would be discussions with them on occasions as to the union, and union membership, and organization, and the like?

A. Well, I never had much discussion with them, because I was a member at that time, and they were members, so the only discussion there would be was "Well, are you going to the meeting tonight?" or something like that.

Q. Or "How is the membership drive going?"

A. Something on that order.

Q. Did you hear them talk to others in your depart-
687 ment who were not members?

A. No. There was really only two of us in that department.

Q. Only two?

A. We were more or less kind of isolated, as far as being close was concerned.

Q. You had 100 per cent organization—

A. Yes.

Q. —among you two?

A. Yes.

Q. You said a few minutes ago that your larger committee met in the yard to elect a smaller committee to call on Mr. Anselm.

Did you refer to the company yard?

A. The company yard?

Q. Yes.

A. Yes.

Q. That is company property?

A. Yes.

Q. I take it you did not ask for permission from the company for the holding of that meeting, did you?

A. Not that I remember, no. It was done during the noon hour. That was just a meeting of the committee.

Q. About how many men were there?

A. About 15 I should judge; I don't just remember.

Q. As far as you recall, Mr. Ruck, you have told us everything that you can about what occurred at the meeting
688 of September 10th?

A. Yes.

Q. You think you would remember it, if there were something of importance that you have not already testified to that occurred at that meeting, is that right?

A. I believe so.

Mr. Swiren: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) You are not working in town at this time, are you?

A. At this time I am not working at all.

Q. I see.

A. I am not working at all.

Mr. Walsh: That will be all. You may step down.

Mr. Swiren: Just a moment; since that question has been raised, let me ask one more question.

Recross Examination.

Q. (By Mr. Swiren.) Did you work anywhere since the 17th of February, 1937?

A. Yes.

Q. Where?

A. I worked in Chicago, and at Libertyville. I got laid off last Saturday.

Q. At Libertyville?

A. At Libertyville.

689 Mr. Swiren: That is all.

Q. (By Mr. Walsh.) What were your weekly earnings, Mr. Ruck, during the time you were employed?

A. At Fansteel?

Q. At Fansteel. What were your average weekly earnings for the last two or three months before you were—

A. About the last month or six weeks it was around $36 a week on the 40 hour basis.

Q. Were you working any overtime?

A. Sometimes we worked Saturdays, but not overtime during the night.

Q. I see. How much money have you earned at other employment since February 26th, 1937?

Mr. Swiren: That is objected to, if the Examiner please. I would like to be heard on that.

Trial Examiner Dudley: Mr. Swiren, how long do you think this argument is going to be?

Mr. Swiren: I am going to be very brief.

Trial Examiner Dudley: Proceed.

Mr. Swiren: Respondent's Exhibit No. 2 is a final decree of the Circuit Court of Lake County entitled "Fansteel Metallurgical Corporation versus Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America" and other defendants including Mr. Ruck.

The decree was entered in that case finding this man 690 was discharged from participating in the seizure and retention of buildings 3 and 5 of the respondent company. What has occurred since then as far as his earnings are concerned cannot be material.

That is the final adjudication between this party and the company.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: You may answer.

The Witness: Restate your question again.

Mr. Walsh: Please read the question, Mr. Reporter.

(The question was read.)

A. Well, I don't know the exact amount, but I do not think it is over $75 or $80.

Q. (By Mr. Walsh.) Will you during the course of the trial try to figure out just how much you have earned, and let me know?

A. Yes.

Q. If you find you have earned any different amount, I will put you back on the stand, and you can correct your answer.

A. All right.

Mr. Walsh: You may step down.

Trial Examiner Dudley: I would like to ask a few questions.

Mr. Walsh: Pardon me.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) During the conference of September 10th, 1936, did Mr. Anselm speaking for the company say that they would not recognize any union at all, or did he say only that they would not recognize an outside union?

691

A. An outside union.

Q. He said they would not recognize an outside union?

A. Or a union with outside influences.

Q. Did he say why he would not recognize a union?

A. I don't remember whether he said anything about that.

Q. Did he say that was the policy of the company?

A. Yes.

Q. Did he say whether or not he had discussed the matter with the president of the company or the directors, or any of the officers of the company?

A. I don't recall him saying anything about that.

Q. Did he say whether or not the company would be willing to recognize any other kind of a union?

A. Well, as far as I can recall he did say that what we should have was a good strong inside union.

Mr. Swiren: Read the answer please, Mr. Reporter. I could not hear it back here.

(The answer was read.)

Q. (By Trial Examiner Dudley.) Did he make any suggestions or offers to help organize such a union?

A. Not at that time, no.

Q. Did Mr. Anselm make any offers to the committee
692 on September 10th, as to contracts which the company would be willing to enter into?

A. No. As far as I recall, he had a few copies of an employees' representation plan, and he gave them to different members of the committee and told them to read it over and see what they thought about it.

Q. Did he say the company would be willing to enter into such a plan?

A. He didn't say so at that time.

Q. Did he say what kind of an agreement the company would be willing to enter into?

A. Not that I know of; not that I recall.

Q. Did he suggest meeting again with the committee to discuss the subject matter of your conference?

A. A meeting with him again?

Q. Yes. Did he suggest any additional or later meeting with the committee?

A. I don't remember that.

Q. About how long did the conference on September 10th last?

A. Well, I should judge about an hour, or something like that. I don't recall exactly.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren) Mr. Ruck, do you recall that Mr. Anselm said, "Come back again, whenever you want to, and as often as you want to"?

693 A. He always told us his office was open to us at any time; but I know, as far as I can recall all the meetings we had were kind of made a little bit in advance, so Mr. Anselm could suit his time.

Q. You remember that he said the same thing at that meeting, just before the close of it, on September 10th?

A. I don't remember whether he said that at that time. He has always said he was willing to meet with any of the employees.

Mr. Swiren: That is all.

Q. (By Trial Examiner Dudley) You had, I assume, one conference with him in the morning of that day, September

10th, and then a later conference in the afternoon of September 10th after you had had a meeting of the committee in the yard at noon, and had cut down the size of your committee?

Is that correct?

A. No.

Mr. Walsh: I believe the testimony was, your Honor, that at the time this person arranged the conference with Mr. Anselm, Mr. Anselm told this person that he only wanted a small committee.

Their negotiating committee consisted of 15 or 18 people, and he only wanted a small group.

Trial Examiner Dudley: I see.

Q. (By Trial Examiner Dudley) Then the meeting you held with Mr. Anselm was held after the meeting of the
694 entire committee in the yard of the company at noon, is that correct?

A. Yes; it was held in the afternoon.

Q. Did Mr. Anselm at that conference say anything about the meeting that had been held in the company yard at noon?

A. No.

Trial Examiner Dudley: That is all I have.

Q. (By Mr. Swiren) Did you tell Mr. Anselm you had a meeting in the company yard at noon?

A. I don't remember whether there was anything said about it or not.

Q. You do not know whether Mr. Anselm even knew about the meeting?

A. I don't know that he did.

Mr. Swiren: That is all.

Trial Examiner Dudley: That is all. You may be excused.

(Witness excused.)

Mr. Walsh: Meyer Adelman.

MEYER ADELMAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your name, please.

A. My name is Meyer Adelman.

Q. Where do you live, Mr. Adelman?

A. I live in the Clayton Hotel, Waukegan, Illinois.

Q. You are presently confined to the county jail?

695 A. Yes, sir.

Q. You have appeared before the Examiner here in response to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. You appear of your own free will?

A. Yes, sir.

Mr. Walsh: Mr. Examiner, I would like to have you explain to Mr. Adelman his privilege under the Act, and ask him whether he claims it or not.

Trial Examiner Dudley: Mr. Adelman, I will inform you that in most courts of law witnesses do not have to give testimony which might be used to incriminate them, or which might be used to find them guilty of crimes, misdemeanors, or other offenses.

The National Labor Relations Act provides that witnesses in these hearings must give such testimony, but if they wish to claim the privilege, that they shall not be prosecuted or subjected to any penalty on account of any transaction on which they may be examined during the hearing before the Board.

Do you wish to claim such privilege?

A. I do wish to claim such privilege, sir.

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh) Mr. Adelman, what is your occupation?

A. I am field director for the Steel Workers Organiz-
696 ing Committee.

Q. Will you talk a little louder?

A. Yes, sir.

Q. How long have you been thus engaged?

A. Since last July.

Q. When did you first come to Waukegan?

A. Around July 5th or 6th.

Q. Were you instrumental in the course of your business in aiding in the organization of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Yes.

Q. Just tell the Examiner in your own words the way that lodge was organized.

A. Several employees—

Trial Examiner Dudley: Speak louder, please, Mr. Adelman; there are a lot of people here who want to hear you.

The Witness: Several employees of the Fansteel Metallurgical Corporation have come to me and asked me about the procedure of organizing a C. I. O. union within their plant.

I have talked with them, and told them all about our procedure and policy, and asked them if they were interested, to come with a larger committee, which they did at a future date.

I talked with the committee, and have explained to them our policy and our procedure, and they proceeded to organize, and I helped them.

697 Q. (By Mr. Walsh) Now, through what steps did you go in the organization of this lodge?

A. We distributed literature around the plant.

Q. Did you ask them to sign anything?

A. We furnished them with application blanks.

Mr. Walsh: Will you mark this, Mr. Reporter, Board's Exhibit No. 11 for identification please.

(The document referred to was thereupon marked Board's Exhibit No. 11 for identification.)

Q. (By Mr. Walsh) I hand you herewith what has been marked Board's Exhibit No. 11 for identification, Mr. Adelman, and I will ask you what that is.

A. This is an application blank for membership in the union.

Q. In the union?

A. Yes.

Q. The union to which that relates is the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. That is correct, sir.

Q. When these men were taken into the union, they signed an application like that, did they not?

A. Yes, sir, except that there were at the beginning a difference in color.

Q. There was no difference in substance?

A. No, sir.

Q. Or the form of the application?

698 A. No, sir.

Q. It was printed on a card of another color?

A. That is correct.

Mr. Walsh: All right. I will offer this in evidence, if your Honor please.

Mr. Swiren: We object to it if the Examiner please. We have been having this same problem ever since Mr. Walsh started putting his case in.

It seems to me that the honest, straightforward way to prove membership, and the authorizations, if there were authorizations, is to bring in the originals. They are in their possession and their control.

We have repeatedly asked for subpoenas to bring them into the hearing. It seems to me, with the hearing as wide open as it has been permitted to be, that there ought to be some effort made on the part of counsel for the Board to bring in the real records that these people have in their possession, and lay them before the Examiner, so we can all see what they are, instead of having to depend upon the biased, prejudiced recollections of paid organizers.

Trial Examiner Dudley: Objection overruled.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 11.)

Q. (By Mr. Walsh) You are paid, are you not, Mr. Adelman, for your work in organizing unions?

699 A. Yes, sir.

Q. That is the way you earn your living, is it not?

A. That is correct, sir. I am proud of it.

Q. There is nothing illegal about your calling, is there?

Mr. Swiren: That is objected to.

The Witness: No, sir. I am proud of my calling.

Mr. Swiren: That is objected to.

Mr. Walsh: There has been some insinuation that the hearing was not straightforward and honest.

Mr. Swiren: There was no insinuation. I say just what I mean. I do not have to insinuate.

Mr. Walsh: I hope you do not say what you mean, Mr. Swiren.

Mr. Swiren: I certainly do.

Mr. Walsh: Well now, let us get back to work.

Q. (By Mr. Walsh) Mr. Adelman, the members of this union selected the Amalgamated Association as the union with which they desired to affiliate, is that right?

A. Yes.

Mr. Swiren: That is objected to. When I object, I think the witness ought to be instructed to wait, and not answer. Unless this witness has personal knowledge of all these things, it seems to me he ought not to be permitted to guess on the witness stand.

Trial Examiner Dudley: I think, Mr. Walsh, the wit-
700 ness should be more definite—

Mr. Walsh: All right.

Trial Examiner Dudley (Continuing): —in relating what happened, rather than his conclusions.

Mr. Walsh: All right.

Q. (By Mr. Walsh) Now, Mr. Adelman—

Mr. Swiren: Do I understand that there has been a favorable ruling on that objection?

Trial Examiner Dudley: The answer is already in the record.

Mr. Swiren: I move that the answer be stricken out.

Trial Examiner Dudley: I suggest that it be supported by definite testimony.

Q. (By Mr. Walsh) Will you state just what the membership of the union did, individually or as a union, with reference to selecting the Amalgamated as their union?

Go through the organization steps for the purpose of the record.

A. They signed application cards for membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Q. Then what happened?

A. Then we decided to meet under the auspices of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and we elected temporary officers.

701 Then we applied for a charter, and our charter was granted. It was received, and their officers were installed in due form, and we proceeded to function as a bona fide lodge.

Q. That charter was given to lodge 66?

A. That is correct.

Q. Who actually delivered that charter to the lodge?

A. The charter was delivered to the lodge by mail.

Q. Do you recall when that was received?

A. Well, it was either the latter part of July, or the first part of August.

Q. That charter is issued by the National office of the Amalgamated, is it?

A. That is right.

Q. There are certain definite requirements for admission of lodges to the Amalgamated, are there not?

A. Correct.

Q. Will you state for the record just what those requirements are?

Mr. Swiren: I object. The constitution and by-laws ought to be brought in. So far as this record shows, this witness has no familiarity with this organization, and is not an officer of this organization. In any event, the records themselves are the best evidence.

Mr. Walsh: I think this witness is qualified to answer.

Q. (By Trial Examiner Dudley) Do you know what
702 the various provisions, rules and so forth are, as laid down by the national office?

A. The provisions are—

Mr. Walsh: Just answer yes or no.

Q. (By Trial Examiner Dudley) Do you know what they are?

Mr. Walsh: Just answer yes or no; do you know?

The Witness: Sir?

Q. (By Mr. Walsh) Do you know what the provisions for admitting lodges to the Amalgated are?

A. Yes.

Q. All right.

Mr. Swiren: I think the witness ought to be asked whether they are contained in any constitution, or by-laws, so we can find out where they are, or whether they are in any other instrument, such as minutes.

Q. (By Mr. Walsh) Will you state, Mr. Adelman, what the provisions are that relate to the admission of lodges into the Amalgamated.

Mr. Swiren: We object.

Trial Examiner Dudley: Objection overruled.

A. The provisions are that workers first sign application cards and duly organize themselves. Then a form is made out—

Q. (By Mr. Walsh) Just a minute.

A. Yes.

Q. With reference to this last statement, what do you
703 mean by "duly organize themselves"?

A. When I say "duly organize themselves", I mean that they sign application blanks and have a semblance of organization.

Q. A semblance of organization is what?

A. They begin to meet in groups.

Q. They have officers, or have trustees?

A. They form offices and they elect temporary officers.

Q. It follows the usual ordinary course followed by groups of that kind?

A. That is right. They meet and elect temporary officers, and then the names of these officers are subscribed in an application blank for a charter.

I signed the charter application. I forwarded that to my regional director, and my regional director sends that to the Steel Workers Organizing Committee, and they apply to the

Amalgamated Association of Iron, Steel and Tin Workers of North America; it is then granted, and mailed to the one designated in the application.

Q. That roughly covers the steps through which the group must go?

A. That is right.

Q. In order to obtain a charter?

A. That is correct.

Q. Such a charter was obtained and was delivered to this group?

704 A. Yes, sir.

Q. That having been done, it constitutes this group or lodge a member of that union?

A. Right, sir.

Q. Now, Mr. Adelman, after this group was organized did you assist them in attempting to bargain collectively with the Fansteel Company?

A. Yes, sir.

Mr. Swiren: That is objected to as calling for a conclusion. I think the witness ought to be directed to state the facts.

Mr. Walsh: All right.

Mr. Swiren: May I ask the Examiner—

Mr. Walsh: Just tell us—

Mr. Swiren: (Continuing) —to instruct the witness to withhold his answer when an objection is made until there has been a ruling.

The other day the witness was very slow in testifying, but now he is very fast.

Trial Examiner Dudley: The witness is so instructed, but the objection is overruled. He may answer.

The Witness: What was the question, please?

Mr. Walsh: Read the last question please, Mr. Reporter.

(The question was read.)

A. Yes.

705 Q. (By Mr. Walsh) Will you just tell us what you did, the steps through which you went; tell the whole story to the Examiner.

A. I met with the officers and the committee of the lodge, and the representatives of the various departments and went over their needs, grievances, and whatever they had in mind.

After analyzing their situation, we have drawn a contract which was a tentative instrument, to present to the company as a basis upon which to bargain collectively. In that contract there were mostly provisions for setting up committees; that

would become a substantial instrument through which set up the bargaining would be obtained.

It also called for certain standards of employment to be inaugurated, and certain working conditions to take place, and the whole thing was voted by the union, and it was submitted as a basis upon which to bargain collectively.

Mr. Swiren: I move that the last statement as to how it was submitted be stricken out. There has been testimony here as to what happened at the conference, by people who attended the conference.

If Mr. Adelman attended the conference, he ought to be permitted to say what occurred there; otherwise, it certainly adds nothing to the evidence.

Trial Examiner Dudley: The facts you point out, Mr. Swiren, are in the testimony. The Board and the Exam-
706 iner in going over the testimony will note them and bear them in mind in evaluating the testimony.

This testimony will, nevertheless, be allowed to be introduced.

Mr. Walsh: Mr. Examiner, I believe I called for the contract that was submitted to the corporation on September 10th. I ask that the company produce it in response to a subpoena.

I understand they have the contract, and are willing to produce it. I would like to have it, and introduce it in evidence, or a copy of it.

Mr. Swiren: I have what one of the witnesses says is a copy. That is the only thing we can find.

Mr. Walsh: You do not have the original?

Mr. Swiren: We agree that is a copy.

Mr. Walsh: I assume it is a copy. I will put it in for what it is worth. You desire it to be introduced anyway, do you not?

Mr. Swiren: I do not care whether you put it in or not, Mr. Walsh.

Mr. Walsh: Thank you.

Mr. Swiren: You can try your own lawsuit. I would like leave, however, to withdraw it and make copies for our own use.

Trial Examiner Dudley: It is in fact not the original, but a copy of what was presented?

707 Mr. Swiren: I am quite certain it is.

Trial Examiner Dudley: That is not the original?

Mr. Swiren: No.

Trial Examiner Dudley: Do you know what happened to the original?

Mr. Swiren: No; we do not have it.

Trial Examiner Dudley: Could Mr. Anselm tell whether it is the original?

Mr. Swiren: A subsequent contract follows this in so many points of importance, that I am convinced there is no question about it.

Mr. Walsh: Mr. Reporter, will you mark this Board's Exhibit No. 12 for identification, please.

(The document referred to, previously marked Respondent's Exhibit No. 4 for identification was thereupon marked Board's Exhibit No. 12 for identification.)

Mr. Walsh: Mr. Examiner, I am only having this marked for identification at this time because Mr. Swiren wants to withdraw it and make copies.

Trial Examiner Dudley: Very well.

Q. (By Mr. Walsh) Mr. Adelman, I hand you what has been marked for identification Board's Exhibit No. 12, and I will ask you to examine that paper (handing document to witness).

Mr. Walsh: May I suggest that we take a short recess?

Trial Examiner Dudley: For how long, five minutes?

708 Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: Would five minutes be sufficient?

Mr. Walsh: Yes.

Trial Examiner Dudley: I will announce a five minute recess; we will reconvene at 11:15.

(Thereupon, a recess was taken, after which the hearing was resumed in the courtroom of the Circuit Court of Lake County.)

Trial Examiner Dudley: Let us reconvene, gentlemen; you may proceed.

Mr. Swiren: If the Examiner please, I desire to renew the application I have made at several other sessions. We have asked for subpoenas and subpoenas duces tecum. The testimony so far makes it perfectly clear—

Trial Examiner Dudley: Mr. Swiren—

Mr. Swiren: (Continuing) —that we cannot get the evidence that has been asked for—

Trial Examiner Dudley: Mr. Swiren—

Mr. Swiren: (Continuing) —that we think we ought to have.

Trial Examiner Dudley: Let me interrupt just a moment. For the record, can you not refer to your remarks of a similar nature on previous occasions?

Mr. Swiren: There have been a number of things that have occurred since I made the last application.

Trial Examiner Dudley: I might also direct your at-
709 tention to the fact that when you get ready to introduce evidence, we will then see what steps should be taken in order that you may get proper action.

Mr. Swiren: We cannot cross examine these witnesses properly without these documents we have requested.

Mr. Block: The subpoenas are under the control of the Labor Board. If those records are under the control of the witnesses—they were under the control of the witnesses—they should be produced at the time when they will be of some assistance to the company here.

Trial Examiner Dudley: If you did subpoena them, you would not want to use them until you started to introduce testimony.

Mr. Swiren: We want to use them when we cross examine the witnesses.

Mr. Block: We want to use them in connection with the matters being testified to by the witnesses.

Trial Examiner Dudley: When you call your witnesses, you will want them then.

Mr. Block: No.

Mr. Swiren: Since the witness is testifying to matters that are contained in some records, we want to have the records and cross examine him on them to verify his testimony.

Trial Examiner Dudley: You could not use them anyway,
if they were lying right here in the room, unless it was
710 through the courtesy of Mr. Walsh.

Mr. Swiren: We cannot properly cross examine him without those records.

Mr. Block: If we call for a document in any court, that document has to be produced within a reasonable length of time.

If counsel who calls for that document attempts to use it either for cross-examination, or to inform himself as to what he may want to cross examine about, that is proper, and that is the time when the document should be produced.

They should not say, "Well, now, we will let you have it later, in case you want to use it". In the meantime, you are deprived of the use of it in the examination of the witnesses.

Trial Examiner Dudley: We will not waste any more time on it.

Mr. Swiren: We object to proceeding without the issuance of subpoenas for the production of witnesses and records, particularly records, inasmuch as it becomes apparent from the testimony of these witnesses that they are essential for the proper examination of these witnesses by our counsel.

Trial Examiner Dudley: The objection is overruled; proceed.

Mr. Block: Is it necessary to take an exception each time?

Mr. Walsh: No; we stipulated as to that.

Trial Examiner Dudley: Proceed.

711 Q. (By Mr. Walsh) Mr. Adelman, I have handed you a document for your examination.

A. Yes.

Q. Have you examined the document?

A. I did, sir.

Q. Are you familiar with the contents of this instrument?

A. I am.

Q. Well, will you tell the Examiner what it is?

A. This is the basis upon—this is the instrument which we have submitted as a basis upon which to bargain collectively.

Q. Did you aid in the preparation of this instrument?

A. I did, sir.

Q. Were you present when it was presented to the company?

A. No.

Q. Now, Mr. Adelman, were you present at some of the conferences between the negotiating committee of lodge 66 and the officials of the Fansteel Corporation?

A. No.

Q. Did you ever attend a meeting between the officers of the company and the negotiating committee?

A. I came to attend a meeting with the company, but they did not meet.

Q. Will you tell the Examiner, directing your attention to September 21st, what happened on that day? Just tell the whole story in your own words.

712 A. The committee requested me to meet them at 1 o'clock, or a few minutes to 1 in front of the office of the Fansteel Metallurgical Corporation in the city of North Chicago. I complied with their wish, and met them.

We came in to the office—the committee—and a gentleman

by the name of Mr. Schultz met us, and wanted to know what we wanted. The spokesman said there was a date for 1 o'clock for the bargaining committee and their representatives, with Mr. Anselm, the then superintendent of the company, and that we were there for that purpose.

He invited us into the offices and told us to sit down. I believe I sat down. That is right; there was a chair there. I sat down, and we waited.

Shortly thereafter Mr. Anselm came in and looked about, and I stood up. The spokesman for the committee was brother Ed Ruck. He introduced me to Mr. Anselm, the then superintendent of the plant, and we shook hands, and Mr. Anselm at once got very hostile. He went into a rage.

Mr. Block: That is objected to.

Q. (By Mr. Walsh) Tell what he said.

Mr. Block: I object to that.

Q. (By Mr. Walsh) Tell what he said, and tell what he did.

A. He asked me for my calling card. I said that a committee of his employees was the best calling card I could have; that in my opinion that was a very essential and 713 bona fide calling card.

Then he said, "Why didn't you stop outside and leave a calling card?" I says, "I don't have any, sir—I came here with the committee ostensibly presuming that the information that I have had that a meeting would take place with the company was bona fide." I says, "What as we arguing about?"

"Well," he says, "I am not going to meet you," and he said, "I am not going to meet anybody with you."

"Well," I said, "Mr. Anselm," I said, "What is wrong here? It is a bona fide committee of the union. You gave the date for the meeting, and all of a sudden you don't want to meet." "Well," he says, "I will meet with a committee, but I am not meeting a committee of the union, and I am not meeting any outsiders."

"Well," I said, "Mr. Anselm, under the law they have a right to choose anyone. They so chose me as their representative. Besides, I was elected by the lodge." I says, "I am anxious to be helpful in bringing about a genuine relationship." He said, "Go on, get out. Get out." He opened the door, and said, "Get out. You have to get out. Get out. Get out. Get out."

"Well," I said, "then I must say I am awfully sorry, be-

cause I thought we would have a meeting here." I says, "I don't mind getting out, if you want to talk the thing over. If you just want me to step out, and come back in again,"
714 I says, "I will step out and wait, there, and let you talk it over." So I did. He said, "Get out, get out," and he kept shouting. I went out there, and sat in the outer office of the Fansteel Metallurgical Corporation, and in about five minutes one of the members of the committee came out and said, "There is no use, Meyer." He said, "The other boys ran out through the back door, and they wouldn't meet, so," he says, "everybody went back. There is no meeting going to take place. You might as well go home."

So I went out of the building, and went about my business.

Mr. Walsh: You may inquire, Mr. Swiren.

Cross-Examination.

Q. (By Mr. Swiren) Did you go to the Fansteel plant prior to February 17th, 1937, at any time other than on the occasion of September 21st, about which you have just been testifying?

Just answer that yes or no.

A. Yes.

Q. How many times?

A. A number of times.

Q. Well, tell us how many.

A. A number of times.

Q. Was it 200?

A. I wouldn't recollect.

Q. Was it 5?

A. Oh, I will say perhaps about—maybe 25 times.

715 Q. 25?

A. About that.

Q. What buildings did you go to?

A. None of the buildings.

Q. Where did you go?

A. To the street in front of the buildings.

Q. What street?

A. The street in front of the buildings.

Q. What street?

A. The street in front of the buildings.

Q. (By Trial Examiner Dudley) Do you know the name of the street?

A. I do not, sir.

Q. (By Mr. Swiren) Were you along the right-of-way of the North Shore Railroad at all?

A. I was on the triangle between the tracks and the street, like that (indicating), so to speak.

Q. On the triangle between the tracks and the street?

A. Yes, and in the middle of the street.

Q. You were on the triangle between the tracks and the street?

A. And in the middle of the street.

Q. Where is that triangle? Is there a sidewalk there?

A. There is not exactly a sidewalk there. There is soft ground, there, sort of near the gates.

Q. Did you go near any of the buildings?

716 A. Well, I went on the sidewalks, yes.

Q. Did you go near any of the buildings of the plant?

A. Oh, it was near. It wasn't far.

Q. What is that?

A. It was near; it was near the buildings, yes.

Q. Buildings 3 and 5?

A. No.

Q. You did not go near buildings 3 or 5?

A. No.

Q. If I were to suggest to you that perhaps you stood on the steps of one of those buildings and conversed with some of the men, you would think that would not be correct, is that correct?

A. I would suggest that would not be correct.

Q. That is your best recollection?

A. That is right.

Q. Is your recollection better now than it was in this court room here the other day?

Mr. Walsh: I object to that as not being material or proper cross-examination.

Trial Examiner Dudley: I think, Mr. Swiren, such questions are out of order.

Q. (By Mr. Swiren) And you never went near any of the buildings of the Fansteel plant except as you might have been near then by being on the public sidewalk, is that right?

717 A. Some of the place there has not got sidewalks.

Q. You never went on the company property during that period, did you, except on September 21st to attend the meeting that you just have been talking about?

A. Not as I can recall.

Q. Are you certain?

A. I never measured what was company property over there. I was told not long ago that the company also owned the road down there. If they did, naturally in going to the station back and forth I had to go on company property.

Q. You do not know whether you have been on company property in connection with your activities on behalf of lodge 66, then, do you?

A. I am certain I was on it on the 21st.

Q. Apart from that date, you do not know?

A. I never give it a thought. I never stopped to think about it.

Q. You did not ask the company's permission to go upon its property for any purpose, did you?

A. I did not—

Q. You did, or you did not.

A. The company didn't want to deal with me.

Q. Answer the question yes or no.

A. I never asked for permission, no.

Q. Did you advise or consult with the officers of lodge 718 66 with respect to membership drives, and the solicitations of memberships?

A. Why, certainly.

Q. And you outlined various methods for soliciting memberships which you knew which were successful?

A. That is correct.

Q. Did you tell them under no circumstances must they carry on that solicitation in the homes of the employees?

A. No.

Q. Did you give them any other warnings?

A. Warnings?

Q. Yes, warnings.

A. I warned nobody.

Q. Did you from time to time see application blanks when they were signed?

A. Immediately when they were signed, they were brought to me.

Q. What did you do with them?

A. I took charge of them.

Q. And you kept them?

A. For a certain length of time.

Q. What did you do with them afterwards?

A. Whatever was required of me to do with them.

Mr. Swiren: I ask that the witness be instructed to answer the question.

719 Trial Examiner Dudley: I believe, Mr. Adelman, that you should answer the questions as fully as you can, because what the Examiner and the Board want to know is the whole story; we want to get a complete and fair picture of the facts.

The Witness: I forwarded them to our office.

Q. (By Mr. Swiren) Which office?

A. In Chicago.

Q. Which office?

A. The office—

Q. The office of the Steel Workers Organizing Committee?

A. The office of the regional director of the—

Q. The Steel Workers Organizing Committee?

A. —Steel Workers Organizing Committee, yes, sir.

Q. Do you know what happened to those cards after you forwarded them to that office?

A. No.

Q. Did the lodge keep any record of those cards?

A. Well—

Q. They did, or they did not, which?

A. I don't think they do.

Q. They did not keep any records of those?

A. They probably did. I am not exactly familiar with whether they did or not.

Q. They did not keep any dues records of their members either, did they?

720 A. Some dues,—

Q. Did they keep a record of the members to find out who was paying dues and who was not?

A. Well, dues was not compulsory—

Q. Did they keep a record?

A. I don't know.

Q. You do not know?

A. No.

Q. You have not any idea as to whether anybody kept a record in lodge 66 of the number of members, the members who signed, and whether they paid dues, or anything else, is that right?

A. I have a record of the names.

Q. You have a record of the names?

A. Yes.

Q. You also have a record of when they signed those appplications?

A. I do not think I was so particular about those things.

Q. You did not care about that?
A. No. It wasn't necessary.
Q. Where are those records you are keeping?
A. My records?
Q. Yes.
A. They are in my office.
Q. In Waukegan?
A. (No answer.)
721 Q. In Waukegan?
A. I don't think my records are in Waukegan at the present time.
Q. Where are they? Where are they?
A. I just opened a new one up at Milwaukee.
Q. Your records are in Milwaukee?
A. That is right. That is my new office now.
Q. If you are directed by subpoena, by a subpoena of this Board to produce those records, will you do so?
A. Certainly.
Q. Will you voluntarily produce those records now?
Mr. Walsh: I object, your Honor.
Q. (By Trial Examiner Dudley) Mr. Adelman, do you have those records with you?
A. Not with me, sir.
Mr. Swiren: Will you arrange to get them?
Q. (By Trial Examiner Dudley) You are at this time in jail, or in the custody of the sheriff, as I understand it?
A. Yes, sir.
Trial Examiner Dudley: You see, Mr. Swiren, your question is answered. He obviously cannot produce them.
Q. (By Mr. Swiren) If we arrange for you to post a letter, or send a telegram, or use the telephone, somebody could get those records from your Milwaukee office, could they not?
A. My records—
722 Q. What is that? What is your answer?
A. I do not know whether they will accept my telephone orders or conversation.
Q. Are you willing to try it?
Mr. Walsh: I object, your Honor.
The Witness: I have not asked for any personal privileges.
Trial Examiner Dudley: Objection overruled.
The Witness: I have conducted myself the same as any other prisoner in the jail.

Q. (By Mr. Swiren) Are you willing to do it if the facilities are made available to you?

Trial Examiner Dudley: Mr. Swiren, let me make a statement here. Mr. Adelman, no person has to testify orally, or produce records voluntarily if he does not wish to do so.

Whether he wants to do so without being subpoenaed is entirely up to him. You are free to testify as to whether or not you are willing to bring in the records voluntarily without a subpoena, or whether you wish to have a subpoena served on you.

The Witness: I do not wish to bring them in voluntarily.

Q. (By Mr. Swiren) You refuse to bring them in voluntarily?

Trial Examiner Dudley: He answered the question, Mr. Swiren.

The Witness: I do not wish to.

Q. (By Mr. Swiren) During the time the members
723 were being solicited, did you hear any complaints about the methods used to solicit members of lodge 66?

A. No. They were highly complimentary.

Q. Everything went along very smoothly?

A. Very nicely.

Q. Directing your attention to the 21st of September, who was in the office of Mr. Anselm when he walked in?

A. He walked in alone.

Q. Who was in the office when he walked in? You were there, were you not?

A. I was in the office.

Q. And almost immediately thereafter, this committee walked in, did it not?

A. No. I walked in with the committee.

Q. Mr. Anselm told you he was not accustomed to having people call on him without being announced, is that right?

A. No, he didn't.

Q. You were sitting in his personal office when he arrived, is that true?

A. I was requested to sit there by his secretary. She said, "Sit down, boys."

Q. Were you sitting in the office?

A. Yes.

Q. He asked you to leave, did he not? He said if you wanted to see him you were to go through the conven-
724 tional channels like any other man who came to see him, is that right?

A. He didn't ask in the conventional way.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Was that answer you just gave the best answer you can give to that question?

A. Not right away; he didn't ask me that right away.

Q. Did he ask you that during the course of the time you were there?

A. He pushed me out. He didn't ask me to leave. He pushed me out.

Mr. Swiren: Read the original question again, please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren) Is that right, or is that not right?

A. He didn't ask me that way. I am testifying under oath. I am not going to answer a question which is leading the other way with an answer that will cause me to prejure myself.

Trial Examiner Dudley: Mr. Adelman.

The Witness: Yes, sir.

Q. (By Trial Examiner Dudley) Did Mr. Anselm ask you to leave?

A. He didn't ask me in a nice way.

Q. Did he ask you to leave?

A. Well, he pushed me out. Would you construe that 725 the same as asking to leave?

Q. Yes.

A. Then he asked me to leave.

Q. Did Mr. Anselm say that if you wanted to see him you should ask permission to see him in the conventional way?

A. No, he didn't say that.

Q. Did he use the expression, "conventional way"?

A. Not at all.

Trial Examiner Dudley: Is that what you wanted, Mr. Swiren?

The Witness: He just said, "Get out of here. Why didn't you leave a card in there. Where is your card?" That is what he said.

Q. (By Mr. Swiren) You want out then, is that right?

A. Of course I went out.

Q. Finally?

A. Yes, sir.

Q. He had to ask you a number of times, I take it, from your testimony?

A. That is right.
Q. Did you send your card in?
A. I didn't have—
Q. Do not make a speech. Tell me whether you did, yes or no.
A. I had no card.
726 Q. Did you send it in?
A. No. I had no card to send in.
Q. Did you go to the information desk, or the telephone operator in the lobby and say you wanted to see Mr. Anselm?
A. I came in with the committee.
Q. Do you understand my question?
A. I do, sir.
Mr. Swiren: Will you read that question, Mr. Reporter, so Mr. Adelman can remember it a little better?
(The question was read.)
Mr. Walsh: I object, your Honor.
Mr. Swiren: That question can be answered yes or no.
The Witness: The spokesman did.
Mr. Walsh: Just a minute. I object, if the Examiner please. The testimony of the witness on direct examination was that he had been advised that Mr. Anselm had arranged for an appointment to meet the committee at that time.
If the witness was so advised, obviously there was no reason to go through this peculiar form of obtaining admittance to the sanctum of Mr. Anselm.
Mr. Swiren: Of course, this "peculiar form" is what we ordinary civil people follow when we call on another human being.
The Witness: Oh, yes.
Trial Examiner Dudley: Mr. Swiren—
727 Mr. Swiren: He can answer that very readily; either he did or he did not.
Trial Examiner Dudley: As I understood your question, you asked Mr. Adelman as to whether or not after he left the office of Mr. Anselm at Mr. Anselm's request, he then went—
Mr. Swiren: Yes; that is right.
Trial Examiner Dudley: (Continuing) —to the information desk or the reception desk and asked the person behind the desk if he might see Mr. Anselm?
Mr. Swiren: That is right.
Mr. Walsh: This is after he had been ordered out of Mr. Anselm's office?
Mr. Swiren: We passed the ordering out a second ago.

Mr. Walsh: Oh.
The Witness: Oh.
Mr. Swiren: We are making progress.
Mr. Walsh: I will withdraw my remarks. I thought you were referring to his going in to see Mr. Anselm the first time.
Q. (By Trial Examiner Dudley) Now, Mr. Adelman, did you go—
A. No.
Q. (Continuing) — after leaving his office, to the information desk?
A. No, I did not
Trial Examiner Dudley: Proceed.
Q. (By Mr. Swiren) Have you done so at any time since that time?
728 A. No, sir.
Q. Have you telephoned Mr. Anselm to ask for an appointment with him?
A. No, sir.
Q. At any time since that time?
A. No, sir.
Q. Did you write him any letters since that time?
A. No, sir.
Q. Were you at the Fansteel plant prior to the time the fence that surrounds most of the plant now was erected?
A. Yes, sure.
Q. You are familiar with the lines along which the fence now runs, are you not?
A. I beg your pardon?
Mr. Swiren: Read the question.
(The question was read.)
The Witness: I do not know what that means.
Q. (By Mr. Swiren) You know where the fence is, especially outside of buildings 3 and 5, do you not?
A. You mean, the whole fence around the plant? Is that what you mean?
Q. Yes.
A. Yes, sir.
Q. Prior to the time that fence was erected—
A. Yes.
729 Q. (Continuing) —were you ever on the ground that has now been taken within the fence?
A. No.
Q. Never?

A. No.

Q. You testified with respect to requirements for the issuance of a charter to a lodge of the Amalgamated Association of Iron, Steel and Tin Workers of North America, is that right?

A. Yes, sure.

Q. Does that association have a constitution?

A. Well now—

Q. I will withdraw the question. Is it a corporation?

A. No, sir.

Q. Is it a voluntary association?

A. Correct.

Q. Does it have any articles of association, or any constitution?

A. Lodge 66 has not.

Q. I am talking about the association, the Amalgamated Association.

A. The Amalgamated Association has, but lodge 66 has not.

Q. We will get to lodge 66. Let us take them one at a time.

A. Counsel, it is an integral part. It must be so explained. Otherwise, you will get mixed up.

Q. Let us take them one at a time.

730 A. I want you to know the facts.

Q. You just take it slowly, and then I will understand you.

A. O. K.

Q. It had a constitution; does it still have a constitution?

A. It hasn't any constitution. Lodge 66 has no constitution.

Q. I did not ask you about lodge 66. We will get to that a little later.

Let us talk about the Amalgamated Association.

A. I don't know anything about the Amalgamated Association.

Q. Nothing at all?

A. I know there is an Amalgamated Association, but I only know about this Amalgamated Association.

Q. What do you mean by "this"?

A. I know that the lodges that I help organize, those are the only lodges that I am concerned with. Outside of that, it is the Steelworkers Organizing Committee.

They act for the Amalgamated Association. My function does not cover that. That is somebody else's function.

Q. Never mind your function. Tell what you know, and what you do not know.

A. Yes.

Q. Look at Board's Exhibit No. 11.

A. Yes.

Q. That is an application for membership in the Amalgamated Association of Iron, Steel and Tin Workers of
731 North America.

Is lodge 66 mentioned there?

A. Through the Steelworkers Organizing Committee—

Q. Wait a minute. Is lodge 66 mentioned there?

A. No.

Q. Well now—

A. But the Steelworkers Organizing Committee is.

Q. The Amalgamated Association of Iron, Steel and Tin Workers of North America mentioned in that application—

A. Yes.

Q. —is the association I am referring to.

A. Yes.

Q. Does it have any constitution, or articles of association, or by-laws?

Mr. Walsh: I object unless the witness is asked whether or not he knows.

Mr. Swiren: This witness has not been reluctant to tell us how much he does not know.

Mr. Walsh: Just a moment.

Mr. Swiren: He is their agent on this job.

Mr. Walsh: He says that he does not know much about the Amalgamated. Let us find out how much he knows before you ask this question.

As I understand it, he never was in close contact with the Amalgamated.

Mr. Swiren: Let the witness testify.

732 Mr. Block: That is absolutely competent, in view of the fact you asked him on direct examination what the requirements were.

Mr. Walsh: I believe I asked him what the requirements for membership in the association were.

Mr. Block: That is right.

Mr. Swiren: Yes.

Mr. Block: Is it not perfectly proper to know whether

those requirements are recorded somewhere, or are written in some instrument?

Mr. Walsh: Let us find out if he knows.

Mr. Block: He gave you the requirements.

Mr. Walsh: Ask the witness what he knows about it. He will tell you all about it.

Mr. Swiren: I stand on my question. I ask that the witness be directed to answer.

Trial Examiner Dudley: Read the question.

The Witness: What do you want me to do with this, hold it? Do you want me to hold this?

Mr. Swiren: I want you to hold that, and then listen very carefully and try to tell the truth.

The Witness: Yes.

Mr. Walsh: I object to counsel's remarks to the witness.

Mr. Swiren: The witness asked for it, and he will get it.

Mr. Walsh: I think the witness is entitled to the pro-
733 tection of the Examiner.

Trial Examiner Dudley: I might suggest, Mr. Swiren, that I think you will get a lot more out of your witnesses if you do not arouse them to hostility, by your own apparent hostility.

Mr. Swiren: If the witness would answer—

Trial Examiner Dudley: Pardon me just a moment. I think if you asked your questions in a lower tone of voice without attempting to intimidate your witnesses, they would be much more willing to give you full answers.

I will ask you to so conduct yourself.

Mr. Swiren: We have had experience with this witness before.

Trial Examiner Dudley: I am not interested in the experience you have had with this witness. I am interested in this hearing that we are holding here.

Mr. Reporter, read the question, please.

(The question was read.)

Trial Examiner Dudley: Now, Mr. Adelman, let me ask you this:

Q. (By Trial Examiner Dudley) Do you know whether or not the Amalgamated Association—by such I refer to the national organization—has any constitution or by-laws?

A. Yes, sir, they have.

Trial Examiner Dudley: Now, answer the original
734 question asked by Mr. Swiren. Mr. Reporter, read the question again, please.

(Question read)

The Witness: Do I understand by that, that counsel is referring to the national organization?

Trial Examiner Dudley: Counsel refers—

Mr. Swiren: I do not know whether it is the national, international or local organization.

The Witness: There is a difference.

Trial Examiner Dudley: Counsel is referring to the national organization of the Amalgamated Association, as opposed to your local lodge known as lodge No. 66.

Is that right?

Mr. Swiren: I am referring to—

The Witness: Mr. Examiner—

Mr. Swiren: I am referring to the association named in this card that the witness has talked about.

The Witness: Oh; well then, this has no constitution or by-laws.

Trial Examiner Dudley: May I see the card?

Mr. Swiren: Yes. (Handing document to Trial Examiner Dudley.)

The Witness: It is the Steelworkers Organizing Committee.

Trial Examiner Dudley: Mr. Adelman, let me ask one question.

The Witness: Yes.

735 Q. (By Trial Examiner Dudley) The Amalgamated Association of Iron, Steel and Tin Workers of North America is a different organization from the organization known as lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, is it not?

A. If I can explain in my own way, I probably would be able to explain it.

Q. All right.

A. The Steelworkers Organizing Committee has an understanding with the Amalgamated Association of Iron, Steel and Tin Workers of North America, whereby that national union has permitted the Steel Workers Organizing Committee to organize lodges.

Then when they organize lodges, they request the charter from the parent organization, which is the national union.

Mr. Walsh: That is the Amalgamated?

The Witness: The Amalgamated.

Mr. Walsh: Yes.

The Witness: The Amalgamated Association issues the

charter, and forthwith suspends the constitution and by-laws with reference to the newly organized lodges, and gives authority to the Steelworkers Organizing Committee to act as their national union until such time as the national convention will be held of all the new steel lodges that are being organized.

Then the full Amalgamated agrees to come in together 736 and abide by the mandate of that convention. That is the story.

Mr. Walsh: As I understand it—

Mr. Swiren: Let me finish my cross-examination.

Mr. Walsh: Let us get this straight. You are pretty well mixed up on it.

Mr. Swiren: No, I am not mixed up.

Trial Examiner Dudley: May I suggest that Mr. Walsh get this straightened out.

Mr. Swiren: I would like to continue my own examination, if the Examiner please.

Trial Examiner Dudley: I will rule that Mr. Walsh may ask a question.

Mr. Walsh: Will the senator from Chicago yield?

Mr. Swiren: Not with a recalcitrant witness.

Trial Examiner Dudley: Proceed, gentlemen.

Q. (By Mr. Walsh) Did I understand, Mr. Adelman, that at the time these new lodges come into the Amalgamated, the constitution and by-laws of the Amalgamated do not apply to them?

A. No, sir. They are suspended by the Amalgamated when they issue the charter.

Q. The reason for that is the change in the type of organization is it not?

A. The reason for that is because they allow us to have jurisdiction of these lodges for the purpose of organizing 737 them and keeping them organized, and perfecting them.

Q. It will be some time under the rules of the Amalgamated before a convention for the purpose of changing and amending the constitution can be called, is that right?

A. That is correct sir.

Q. Until that convention is held, and until that convention acts upon what the new constitution will be,—

A. The Steelworkers Organizing Committee—

Q. (Continuing) —the Steelworkers Organizing Committee controls—

A. That is right.

Q. —the new lodges?

A. That is right. They are the parent body for the new lodges.

Mr. Block: Now, if the Examiner please—

Mr. Walsh: I will try to explain that.

Mr. Block: I am addressing my remarks to the Examiner. Please to not make these side remarks. I am addressing my remarks to the Examiner.

I object to this. If counsel is actually attempting to have this subject explained, he ought to permit the witness to explain it. He can ask any question he wants to concerning it, but he should ask a question rather than giving him the answer. In other words, it is leading and suggestive.

—We have no objection, if he wants to, to his clearing it
738 up. You have ruled he has a right to clear it up.

Trial Examiner Dudley: I think what Mr. Walsh is trying to do is to get the facts. There is no reason why there should be any mystery or any particular controversy as to the matter of getting the facts.

Mr. Swiren: I quite agree with you on that; but if he wants to clear it, let him put questions to the witness and clear it up, instead of putting the answers to him.

Mr. Walsh: If the answer I put in his mouth is wrong, he will tell you about it.

Mr. Swiren: That is not the way to proceed.

Trial Examiner Dudley: Do you want to bring anything else out?

Mr. Walsh: No. I think that pretty clearly explains to these gentlemen what the situation is. I want them to know it, so they will not be wandering around in a fog.

Trial Examiner Dudley: Mr. Swiren; have you any additional questions?

Mr. Swiren: Yes.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) Does the Steelworkers Organizing Committee have any constitution, by-laws or articles of association?

A. I don't know.

Q. Does lodge 66 have any by-laws or governing regulations?

A. No, except Roberts' rules of order, and good common sense.

739 Q. Referring to the cards that were signed by various employees of the Fansteel Company that were delivered

over to you, was there any record made by any of the officers of lodge 66 from those cards before they were delivered to you?

A. That I could not say.

Q. Who turned those cards in to you?

A. Any of the people that worked there.

Q. They did not pass through the hands of the officers?

A. No.

Q. The officers of the lodge?

A. The cards came into my possession before there were officers, a lot of them.

Q. They are now in your Chicago office, is that right?

Mr. Walsh: Milwaukee.

Mr. Swiren: Or rather, your Milwaukee office; which?

The Witness: My Chicago office.

Q. (By Mr. Swiren) The records containing part of the information from the cards are now in your Milwaukee office?

A. That is correct.

Q. Can you tell us whether any of the officers of the lodge have any portion of the information?

A. Well—

Q. Do they have any portion of the information in their records?

A. I really don't know. To be very honest with you, 740 I don't really know.

Q. Was the attendance at these various meetings recorded by anybody?

A. They don't record attendance.

Q. You did not have any roll call

A. No, we didn't have no roll call. There was a roll call of the officers, probably, but not the membership.

Q. No dues were paid, as I understand it, by any of the members since the organization of lodge 66?

A. Some dues was paid. You see, we suspend the payment of dues during the different periods.

Q. Was it suspended during the entire period?

A. No; during different periods.

Q. Then it would be your impression, I take it, that there would be some record as to who paid dues, and wo did not?

A. Well, every member has his card—

Q. I am talking about the lodge, the lodge itself.

A. Naturally there would be.

Q. Whose duty would it be to keep that record?

A. That would be the duty of the financial secretary, sir.

Q. Do you know whether he has that record, or those records with respect to lodge 66?

A. Well, I really don't know whether he has or not, because you realize lodge 66 has been through some catastrophe.

Q. Yes. I realize it, too.

741 A. Yes.

Q. Have you had any meetings of lodge 66 since February 26th, 1937?

A. What was the question again, please?

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. Why, yes, strike meetings.

Q. (By Mr. Swiren) How many meetings have you had, Mr. Adelman?

A. Lots of them, strike meetings.

Q. You attented those meetings?

A. At times.

Q. Did you hear any mention of those records with respect to the members, or with respect to dues or the non-payment of dues?

Did you hear any mention of that at those meetings?

A. Those meetings I attended—I wouldn't hear any of their proceedings, except when my time would come, I would simply give them a talk, and go about by business. It was just talk meetings, not business meetings.

Q. Are you an officer of lodge 66?

A. No.

Q. As these cards representing applications for membership reached you, did you turn them over to the secretary or any other officer of the lodge?

742 A. As these cards reached me, I would naturally keep them in rotation and go over them, and tell the officers sometimes that we have had so many cards more, and I would give them the names of the people who joined, and proceed with the cards to our Chicago office.

Is that what you want to know?

Q. Yes.

A. I want to cooperate with you.

Q. Did you show those cards to any of the officers?

A. Well, I probably would and I probably wouldn't. It would be immaterial.

Q. You would not, in the regular course of events?

A. It is not material.

Q. Just a moment. Let the Examiner decide that.

A. I mean, as far as I was concerned; I did not mean here. As far as I was concerned, it was not material whether the officers saw them or not.

Q. You kept them and did not turn them over to the officers then, is that correct?

A. Yes.

Mr. Swiren: That is all.

Trial Examiner Dudley: Are there any further questions? (No response.)

Trial Examiner Dudley: Just a moment, Mr. Adelman. I want to ask a few questions.

743 The Witness: Sure.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) I believe you testified that you were the one who sent into the Steel Organizing Committee the application for a charter?

A. Yes.

Q. You wrote that letter as organizing agent of the lodge, or in some such capacity?

A. I filled out a regular blank, a regular constituted form for the charter.

Q. You filled out—

A. A regular application.

Q. —an application blank?

A. That is right.

Q. Do you have copies of that in your records at either Chicago or Milwaukee?

A. I don't know whether I have. I don't know whether a copy of that would be in the Chicago office. There might be.

Q. Was the application signed by any of the employees of the company?

A. No. The application was signed by me.

Q. Did the application state that there were any employees of the company, whom you named, who desired to form a lodge?

A. No, sir. The application stated that the employees of the company are organized into a union, and submits the 744 names of the officers.

Then I certified that I so did that, that I organized the lodge, and duly constituted them into a lodge, and that they are now applying for a charter.

Q. I see. I would like to ask you a few questions regarding your meeting with Mr. Anselm on February 7th—no.

A. The 21st.

Mr. Walsh: September 21st.

Trial Examiner Dudley: Yes, September 21st, 1936.

Q. (By Trial Examiner Dudley) Did Mr. Anselm at that time say that he was opposed to the company forming unions —or the employees forming unions?

A. No.

Q. Did he say he was opposed to unions?

A. He said something like that.

Q. Did he say he would not negotiate or confer with an outside representative?

A. Oh, yes. He said that.

Q. That was the reason for his asking you to leave?

A. Yes, I guess so.

Trial Examiner Dudley: I have no further question. Has anyone else?

Mr. Swiren: Yes.

Q. (By Mr. Swiren) He did not tell you he was not accustomed to having people come into his office and wait 745 for him without being announced, did he?

A. (No answer.)

Q. He either did, or did not. I think that requires a yes or no direct answer.

Q. (By Trial Examiner Dudley) Did Mr. Anselm say he saw people only when they were announced by his secretary, or through the information desk?

A. I don't think so. I was announced to him. When he came in, I was announced to him. He didn't say that to me.

Q. Did the committee have an appointment?

A. Yes.

Q. The committee asked you to come in, is that right?

A. Certainly.

Q. To participate in the negotiations?

A. That is right.

Q. (By Mr. Swiren) Who told you there was an appointment?

A. Who told me there was an appointment?

Q. Yes.

A. A representative of the National Labor Relations Board.

Q. What was his name?

A. What was his name?

Q. Yes.

Mr. Walsh: I object to that as not being material.

The Witness: I don't remember.

Mr. Swiren: I cannot think of anything more important.

746 Trial Examiner Dudley: He may answer if he remembers, who it was.

The Witness: Who was it that told me? Several of them tried to help along in this thing. Who was that?

Q. (By Trial Examiner Dudley) Who invited you to join the committee?

A. I beg your pardon?

Q. Who invited you to join the committee on this occasion?

A. Why, the whole committee and the lodge. It was to be understood that I was to be with them all the time. It was an established fact.

It was the desire of the lodge.

Q. (By Mr. Swiren) Who expressed that desire to you?

A. I beg your pardon?

Q. Who expressed that desire to you?

A. Every member who handed me an application blank.

Q. Every member who handed you an application blank?

A. I say, when they had signed an application blank, they expressed that desire.

Q. They told you they wanted to meet Mr. Anselm?

A. The Steelworkers Organizing Committee—

Q. They asked to meet Mr. Anselm on the afternoon of September 21st, is that right?

A. No, not on that afternoon, no.

Q. Who asked you to meet on that afternoon?

747 A. It was arranged by—what is that fellow's name? Oh, yes. Mr. Disser; that is his name.

Q. He told you he had made an appointment for you—

A. Right.

Q. (Continuing) —to meet Mr. Anselm on the afternoon of the 21st at 1 o'clock?

A. Correct.

Q. When did he tell you that?

A. A day before.

Q. Where?

A. In my office, 108 South Genessee, if you please, room 217, in the presence of several of the boys.

Trial Examiner Dudley: May I ask who Mr. Disser is?

Mr. Walsh: He is from the Chicago office of the National Labor Relations Board, is that right?

The Witness: Yes.

Mr. Walsh: That is right.

Trial Examiner Dudley: Are there any other questions?

Mr. Swiren: That is all.

Mr. Walsh: That is all I have at this time.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Mr. Block has suggested an adjournment until 2 o'clock.

Mr. Block: I have a few things to do. We have been
748 in court quite regularly. I am merely suggesting that. If you want to come back sooner, that is agreeable.

Mr. Walsh: Suppose we adjourn until 2 o'clock.

Trial Examiner Dudley: The hearing is adjourned. We will reconvene at 2 o'clock.

(Thereupon, at 12:10 o'clock, P. M., a recess was taken until 2 o'clock, P. M.)

After Recess.

(The hearing was resumed at 2 o'clock P. M., pursuant to the taking of recess.)

Trial Examiner Dudley: You may proceed, gentlemen.

Mr. Walsh: Mr. Kondrath.

JOHN A. KONDRATH, recalled as a witness on behalf of the National Labor Relations Board, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) Mr. Kondrath, were you a member of the negotiating committee that called upon the company at various time to negotiate with them?

A. I was.

Q. Will you tell us about the meeting that you had with the company on the 10th of September?

A. On the 10th of September—well, on that particular morning I believe I went in and asked Mr. Anselm if we could have a meeting with the management.

Q. Yes.

749 A. He asked me to sit down. He said, "Well, I think you can", he says, "but how big of a committee have you got?"

I says, the lodge has a committee of 12 that they want to come in and talk with the management.

Mr. Swiren: Will you speak a little louder, Mr. Kondrath.

The Witness: Yes.

Mr. Swiren: A committee of how many was that?

The Witness: 12. They wasn't there. We just were talking about a committee of 12. Mr. Anselm said that a 12 piece committee was too large a committee. He says, "It will take a little bit too much time."

He wanted to know if we could cut that down to approximately three or four, or any smaller number. He wanted to know more about this union of ours, and I told him that I couldn't recite any of the stuff about the union because it is up to the committee to say.

So I promised him I will see what I can do about the committee, and he said, "Well, you go ahead and see the boys, and if they cut down on the committee, be back here at 1 o'clock." So, during the noon hour the boys gathered by the boiler house outside of the yard, near building 6, and they decided to cut the committee in half. Instead of 12, 6 would go in.

Immediately I went upstairs to the tool room and I got ahold of a telephone, and I called Mr. Anselm up. I told him
the committee has decided to let 6 members come in. Mr.
750 Anselm said, "Well, be sure that they are employed by
the management five years or better." So for a minute I hesitated, to look over in my memory about the members, and I was positive they were all better than five years, or very near five years employees there. I replied, "Yes, they are all five years on that committee."

So, we went in and we were met by Mr. Anselm in his office.

Q. (By Mr. Walsh) Did you present at that time a proposed agreement to the company?

A. Yes.

Mr. Walsh: Where is that exhibit?

Mr. Swiren: I have that exhibit.

Mr. Walsh: Oh, yes.

Q. (By Mr. Walsh) I hand you this paper which has been marked for identification as Board's Exhibit No. 12, Mr. Kondrath. Will you look that over and tell me whether or not that paper contains the proposed contract that you submitted to Mr. Anselm?

A. Yes. This is it.

Q. Now, after you had presented this to Mr. Anselm, what did he say?

A. Well, after that was presented, there wasn't much of a discussion of anything, except he asked if he could take time off to read the contract. So we said, "Yes".

He read the contract, and after he had read the contract he took a little rest like, and he said that he could even do
751 better, but not in that form of a contract, meaning that type of contract with the Amalgamated Iron, Steel and Tin Workers Association.

Q. What did he say about that?

A. That the management could never see it; that is, it is an outside union.

Q. They would never see it—what did he mean by that? What did he say?

A. That they would never accept it as the collective bargaining agency in that particular plant.

Q. When he said that he had reference to the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Yes.

Q. Now, who was present at that meeting with Mr. Anselm representing the management, do you know?

A. Yes. Carl Swanson—

Q. No; I mean, who was there representing the company?

A. Oh, the company.

Q. Who represented the company?

A. No, there was nobody there except Mr. Anselm at that meeting.

Q. At that meeting?

A. At that meeting.

Q. Was Mr. Aitchison or Mr. Troxel at that meeting?

A. They were not. They were in another meeting,
752 but not this one.

Q. Not that meeting?

A. No.

Q. All right. Was there anything else done at this first meeting with Mr. Anselm?

A. Well, there was a little discussion. Hs asked mostly the other fellows one thing and another. As a matter of fact, he didn't ask me much.

Q. Yes.

A. There was lots of discussion in between the other members of the committee. He asked Angelo Galbavy how long he worked there, and he didn't remember him so well, and so forth.

Q. Yes.

A. In the meantime, there were some—if I remember right, there was some kind of union books or by-laws that existed at that time at the American Steel & Wire Company—

Q. Did he discuss that American Steel & Wire booklet with you at this meeting, or was that at another meeting?

A. Yes, I believe it was in this meeting.

Q. At this meeting, was it?

A. Yes.

Mr. Walsh: Will you mark this Board's Exhibit No. 13 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 13 for identification.)

753 Q. (By Mr. Walsh) Had the union empowered this committee to enter into bargaining relations with the company?

A. Yes, sir.

Q. Tell the Examiner just how that was done, just how the union gave this committee authority to bargain for them.

A. They were nominated and elected, to my memory.

Q. At a meeting of the union?

A. At a meeting of the union.

Q. I will hand you herewith a little booklet that has been marked as Board's Exhibit No. 13 for identification.

I will ask you how that came into the possession of the union?

A. That was brought in on this meeting by somebody; who, I didn't see, because the door only opened up just enough to hand it in.

There wasn't even enough there to go around, for all the members of the committee, so I myself didn't get any copy, but I have seen them on the desk.

Q. That was in Mr. Anselm's office?

A. Right.

Q. On the 10th day of September? Is that your recollection?

A. That is my recollection.

Q. Someone from outside Mr. Anselm's office handed it into the office?

A. Yes.

754 Q. Then did Mr. Anselm hand that booklet around?

A. Yes.

Q. What did he say to the men when he handed that around?

A. Well, he said that if we had—or rather, would like to have in mind such a thing as this shop representation plan, he would recommend that we go back to the plant and see what we can do about it; that is, let us talk it over among ourselves and see if we could not start a union like this, instead of the Amalgamated Association.

Q. That is, what he said was that the plan was in force at the American Steel & Wire Company plant here in Waukegan, is that right?

A. Yes.

Mr. Walsh: Mr. Examiner, I would like to offer this in evidence.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No.

Trial Examiner Dudley: It may be admitted as Board's Exhibit No. 13.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 13.)

Q. (By Mr. Walsh) Now, I believe the committee had a further meeting with the company on the 21st of September; were you on that committee?

A. Yes.

755 Q. Will you tell the Examiner just what happened at that meeting with Mr. Anselm, as near as you can recall; tell us who was on the committee, and just what happened.

A. On the 21st of what month?

Q. The 21st of September, 1936.

A. On the 21st I believe we had a changed contract, another contract modified much less than this. If I remember right, there was supposed to be a meeting arranged by the Labor Board man for us at 1 o'clock, and for this meeting the lodge had voted in Meyer Adelman as a representative, and also to be in the committee.

At that particular time we went in on the understanding that the meeting was called by the National Labor man for us at 1 o'clock. We met Mr. Meyer Adelman on the outside, and we walked into the office through the lobby.

As we came in to the secretary's office, Schultz told us to go right into Mr. Anselm's office and sit down, that Mr. Anselm was back out in the factory, and he would be back and see us.

We sat there a few minutes and Mr. Anselm did come. Mr. Ed Ruck was the spokesman. He introduced Mr. Meyer Adelman.

Mr. Anselm said, "I have nothing to do with this gentleman here. He is not on my payroll." And he says, "Therefore, I don't want to have any discussion with him. He better go out and present his card and wait out in the lobby, 756 and then maybe I will leave him in."

Well, Meyer Adelman told Mr. Anselm he had no calling cards, but that he thought that the committee that had brought him in there was better than any calling cards he could have.

Mr. Anselm got kind of upset and told him to leave, and get out. He says, "Get out of here. We don't want you", or words to that effect.

So then Mr. Meyer Adelman went out, and Mr. Anselm was very excited and angry, and wanted to know who brought him in. We said nobody particularly, except the committee.

Well, we asked Mr. Anselm if there was a date set by the government man there for us, which we understood that there was. He said not that he knew of, there was no such meeting. Then Mr. Carl Swanson apologized to Mr. Anselm and said that we were misinformed about the meeting. Then we went back to the plant.

Q. At that time did you leave with him a proposed contract?

A. I don't remember that, whether we did. It was so exciting I can't recall.

Q. I see. What if anything did Mr. Anselm say about recognizing an outside union on that day?

Mr. Swiren: That is objected to, if the Examiner please. He has exhausted this witness' recollection by direct questions. Now he is suggesting, and leading the witness by his statements.

If the witness has anything more to add, he ought to add it, and not Mr. Walsh.

757 Trial Examiner Dudley: I think it is proper to prompt the witness' memory by questions. Proceed.

Mr. Swiren: I think he ought to exhause his memory first.

Mr. Walsh: I thought you said I had.

Mr. Swiren: You asked who was there, and what was said; he has told you everything that was said.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: Read the question, please.

(The question was read.)

A. Well, I was so excited, I don't really remember.

Mr. Walsh: All right.

Q. (By Mr. Walsh) Now, directing your attention to February 17th, 1937, did a committee from the lodge have a meeting with Mr. Anselm on that date?

A. Yes.

Q. Can you tell us who was on the committee?

A. Well, that was pretty nearly an 18 or 20 piece committee.

Q. Who made up that committee?

A. The lodge.

Q. How was it picked out?

A. It was nominated from the floor, and elected.

Q. Where did the various members of the committee work in the plant?

A. In various departments.

Q. Were all departments represented?

758 A. Practically.

Q. Just tell the examiner what happened on that day, at the meeting on the 17th.

A. Well, that morning at about 9 o'clock we all gathered into the office. We wanted to know if Mr. Anselm was in, and Mr. Luther replied that he wasn't; he said, "He is not, but he probably will be here any minute." And he said, "Just go over here close to his office, or in his office, and sit down. He will be around later on."

So we all sat down and waited for Mr. Anselm. Mr. Anselm came in shortly and wanted to know what it was all about, so the committee told him that we were the bargaining committee representative of the plant, and we would like to have union recognition; we would like to meet the management.

Mr. Anselm answered that he did not think that that was very much necessary, as the company does not want to recognize any outside union. But nevertheless there was a lot of discussion about why and why not, and we seen Mr. Aitchison come into the plant and he went upstairs to his office.

We asked Mr. Anselm to go up and see Mr. Aitchison, if he would come down and confer with the committee, and talk this thing over.

He went up, according to him, and he seen Mr. Aitchison. He came back and said, "Nothing doing. It stands as it is, everything." For a minute he thought, and then he says,

759 "Well, if you all want to come back around about 2 o'clock this afternoon, maybe there will be a different story, a different attitude."

So we promised we would come back at 2 o'clock. We came back, and we all got into Mr. Anselm's office practically, and Mr. Anselm says, "It is still the same. We can't recognize an outside union. If you fellows want to call it as a shop committee, why, we will give you collective bargaining, but under the leadership of outsiders, and the Amalgamated Association of Iron, Steel and Tin Workers, we will not."

So then there was quite a discussion. One member of the committee said one thing, and the other said another thing, and it led up to quite almost an argument.

So, at last I asked Mr. Anselm—no. Mr. Anselm stated he does not know whether this is a real law of the land, as the Supreme Court had not ruled on it. Then I said, "But Mr. Anselm, isn't it a fact that unions in the United States have been recognized before, when there weren't any laws at all for labor?"

He says, "I will agree with you on that." Then some other members said something to him which I can't recall; some of the other members did.

Q. What occurred immediately following the meeting in the afternoon with Mr. Anselm?

A. Well, somebody—some other member of the com-
760 mittee had said something to Mr. Anselm, but the answer had come from Mr. Anselm that he has been managing working men for a number of years, a good many years, and there was never any time where there was any dispute that the men would walk out on him.

After that we adjourned, and we went to the plant.

Q. Had this committee received any instructions from the union before it went to meet the management?

A. They had instructions to ask for collective bargaining, and was powered by the lodge to do as they saw fit.

Q. After the conference with Mr. Anselm, what did the committee do?

A. The Committee met in one portion of the chemical building, and they decided unanimously that they would protest in two buildings for collective bargaining.

Mr. Walsh: All right. Mr. Swiren, do you have a copy of the contract presented on the 21st of September?

Mr. Swiren: There was none presented on the 21st.

Mr. Walsh: There was none presented?

Mr. Swiren: No. There was another contract presented prior to September 21st.

Mr. Walsh: Do you recall upon what date that was?

Mr. Swiren: Let me see if I have it.

Mr. Walsh: This does not need to be in the record.

Mr. Swiren: Here is a contract (handing document to counsel).

761 Mr. Walsh: Will you mark this Board's Exhibit No. 14 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 14 for identification.)

Mr. Walsh: Mark this one Board's Exhibit No. 15 for identification please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 15 for identification.)

Q. (By Mr. Walsh) I hand you a letter which has been marked for identification Board's Exhibit No. 15. I will ask you whether or not you have seen that copy, and how it came to your attention.

Trial Examiner Dudley: Is that Exhibit No. 15, or Exhibit No. 14?

Mr. Walsh: That is Exhibit 14, I believe.

Trial Examiner Dudley: You said "15".

Mr. Walsh: I should have said "14".

The Witness: Yes. We got this by mail.

Q. (By Mr. Walsh) This was received through the mail, is that right?

A. Through the mail.

Mr. Walsh: I offer this in evidence, if the Examiner please, as BOARD'S EXHIBIT NO. 14.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

762 Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 14.)

Q. (By Mr. Walsh) I hand you a paper which has been marked Board's Exhibit No. 15 for identification entitled "A plan of employe representation which has been pronounced successful in a large number of plants."

I will ask you if you have ever seen that before.

A. Yes.

Q. Where did you get that?

A. We got that in the factory.

Q. Was that delivered to each employee?

A. Each employee, as far as I know. I got one.

Q. You got one like that, did you?

A. Yes.

Mr. Walsh: I offer this in evidence, if the Examiner please, as BOARD'S EXHIBIT NO. 15.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 15.)

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Mr. Kondrath, at the meeting on
763 September 10th, do you recall what was said with respect to the check-off system and the provision of the contract relating to check-off?

A. I didn't get that.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. I don't remember if there was anything said about the check-off system.

Mr. Swiren: Speak louder. I did not hear your answer.

Q. (By Mr. Swiren) What is it you do not remember?

A. I don't remember if Mr.—somebody said anything about the check-off system.

Q. You do not know whether that was discussed at all?

A. I myself don't remember.

Q. What is that?

A. I myself don't remember. There was more members of the committee.

Q. Do you recall what was said about the closed shop provision of the contract?

A. No, I don't.

Q. Do you recall, Mr. Anselm saying that the company would not require anyone working for the company to pay dues to the union unless they wanted to?

A. He said that it did not make any difference to him if the fellows did belong to other organizations, and still had this company representation; that they weren't against
764 employees belonging to an outside union, but as far as the company was concerned, they would not recognize that particular union.

Q. They would not require employees to join the union as a condition of keeping their jobs, is that not right?

A. Repeat the question.

Mr. Swiren: Read the question.
(The question was read.)
The Witness: Mr. Examiner—
Mr. Swiren: Speak up so we can hear you.
Trial Examiner Dudley: Speak so everybody can hear you.
The Witness: I would like to have some information from the Examiner. This question is a funny question. I don't understand it.
Mr. Swiren: Let me restate it, so you will understand it.
Q. (By Mr. Swiren) Did not Mr. Anselm say that anyone could join the union if they wanted to, but the company would not require all the employees to join the union—
A. Well, Mr. Anselm—
Q. Just a minute.
A. He said—
Q. Wait a minute, until I finish my question please.
A. All right.
Q. Did he not say that the company would not require or insist that any employee join the union and pay dues to the union, but that was a matter each employee must decide for himself?
765 A. Mr. Anselm said he wouldn't—the company wouldn't force anybody to join that union.
Q. Or pay dues to the union?
A. Or pay dues to the union.
Q. Yes.
A. Right.
Q. Did you then say that you would take out the check-off system provision, or the closed shop provision from your contract and go along without that, or did you just take your contract and go?
A. We discussed it, that we would probably take that out.
Q. You told him you would take it out?
A. We did, out of the other contract, didn't we?
Q. No. Did you tell him then that you would take it out?
A. I don't remember if I told him there or not, but anyway the contract was revised, and that check-off system was taken out.
Q. You are sure the check-off system was taken out of the revised contract?
A. Yes.
Q. You are as sure of that, as you are of all the other testimony—
A. Yes.

Q. Wait a minute.

A. All right.

766 Q. You are as sure of that as you are of all your other testimony regarding that meeting of September 10th?

A. Yes.

Q. You are just as sure?

A. Yes.

Q. But you are not sure as to whether anything was said about taking it out at that time?

A. No. I'm not sure of that.

Q. Now, directing your attention to the meeting on September 21st, you entered the lobby with Mr. Adelman, is that right?

A. Right.

Q. The lobby of the administration building?

A. Yes.

Q. There is an information desk or window in the lobby?

A. There is.

Q. Visitors coming up to see someone go to that information window, is that right?

A. That is right.

Q. You did not stop at that information window, did you?

A. No.

Q. You walked right through the door which leads to Mr. Schultz' office, and then into Mr. Anselm's office?

A. Correct.

Q. Did you tell Mr. Schultz you had an appointment with Mr. Anselm?

767 A. I didn't.

Q. Did somebody tell him that?

A. The spokesman did.

Q. He said, "We have an appointment at 1 o'clock with Mr. Anselm"?

A. Correct.

Q. What did he say then?

A. Mr. Schultz says, "Go right in, and sit down."

Q. Mr. Adelman at that time did not leave word at the information desk at all?

A. No.

Q. That he wanted to see Mr. Anselm?

A. No.

Mr. Walsh: I object to that. How would he know that?

Mr. Swiren: He was there.

Mr. Walsh: I think the testimony of the witness is that the committee did not stop there. How would he know what Mr. Adelman had done?

Trial Examiner Dudley: Your question was whether or not Mr. Adelman had stopped.

Mr. Swiren: That is correct. The witness testified he met Mr. Adelman outside, and escorted him into the inner office.

Q. (By Trial Examiner Dudley) Did Mr. Adelman stay with the committee as they went through the corridors to Mr. Schultz' office and then to Mr. Anselm's office?

768 A. Yes.

Q. Did Mr. Adelman stop at the information desk as far as you know?

A. Not that I know of.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Swiren) When Mr. Anselm came into the office, he told Mr. Adelman he would have to make an appointment to see him, did he not, if he wanted to see him?

A. Well, yes; he meant it.

Q. When you introduced him—

A. The spokesman introduced him.

Q. Yes. Then he asked how he got in, did he not?

A. Yes.

Q. Mr. Adelman said he walked in?

A. Mr. Adelman says "I was admitted by your secretary through the door."

Q. During the course of that conversation did Mr. Anselm say he did not have any appointment?

A. Yes.

Q. And that he had not known of any appointment at all?

A. No.

Q. Then he told Mr. Adelman that if he wanted to see him, he would have to proceed in the usual way and have himself announced through the information desk in the lobby, is that right?

769 A. He told him to present a card and wait out in the lobby until he is called.

Q. Mr. Adelman said, "Well, it doesn't make any difference. I am here anyhow", did he not?

A. No, he did not.

Q. What did he say?

A. He said he wanted Mr. Anselm's attention to realize the fact that he was brought in there by a committee, and he thought that was better than presenting a calling card.

Q. Mr. Anselm said that if he wanted to see him he would have to proceed in the usual way, and go to the window and have himself announced, is that right?

A. He told him about cards, calling cards.

Q. He told him he would have to go out, and be announced in the regular way if he wanted to come in and see him?

A. He told him, as soon as he saw he didn't have a card presented, "Where is your card? Where is your card? If you haven't got a card, go out and wait in the lobby and present a card."

Q. Mr. Adelman went out?

A. Correct.

Q. Did you go out with him?

A. No.

Q. Did you see him after that that afternoon?

A. No.

Q. By the way, was this conference on the 21st and
770 the conference on the 10th on company time?

A. I believe it was.

Q. Did you ask—

A. The management always said whenever we wanted to come over to the office, and not to hesitate. They said to just come right over, and they are willing to meet us at any time.

Q. You did not hesitate when you came around, did you?

A. Sometimes I went there and made an appointment. This particular time—

Q. This time you did not hesitate, did you?

A. Now, just a minute. Wait a minute. This time that was made by a Labor Board man. We were advised that a meeting had been arranged with Mr. Anselm, and that we were to go in at 1 o'clock and meet him.

Q. Who advised you?

A. A member of the Labor Board conciliator's—

Q. He told you personally?

A. Personally.

Q. What was his name?

A. I forget what his name was.

Q. Was it Mr. Disser? His name has been mentioned here this morning.

A. Well, yes, I believe so.

Q. Are you sure of that?

A. I believe—

771 Q. Are you sure it was Mr. Disser?

A. Yes.
Q. Where did he tell it to you?
A. He told me in Waukegan.
Q. He is the man who re-wrote your contract for you, is that right?
A. He didn't re-write it.
Q. He did not have anything to do with re-writing it?
A. Not re-writing it, no.
Q. Did he have anything to do with correcting it, or changing it?
A. He advised what he thought Mr. Anselm probably would submit to.
Q. You followed his advice?
A. Part of it.
Q. He suggested changes in the language?
A. Not necessarily.
Q. Well, did he?
A. Well, probably, words.
Q. Then after your meeting of September 21st, you received a letter addressed to the employees of the company which has been offered and received in evidence as Board's Exhibit No. 14, is that right?
A. Yes. I don't remember the date.
Q. Will you refer to that letter, so that your recol-
772 lection may be refreshed. That letter states the labor policy of the company, does it not?
A. Yes.
Q. Is that right?
A. The labor policy?
Mr. Walsh: I object, unless there is some information here to indicate on behalf of the company that this is a complete and full statement of the labor policy of the company.
I do not know how this man, an employee, would have information as to whether that was all of the labor policy.
Mr. Swiren: Whatever he does not know, he can tell us.
Mr. Walsh: I think the letter speaks for itself.
Trial Examiner Dudley: I think, Mr. Swiren, that the letter speaks for itself, as to the contents of it.
Mr. Swiren: This is just a preliminary question. I want to proceed further.
Trial Examiner Dudley: Proceed; see what you can develop.
Q. (By Mr. Swiren) You understood that was a state-

ment of the company's policy with respect to its employees, did you not?

A. You mean, as individuals, here?

Q. With respect to all of its employees.

A. Yes.

Q. That letter dealt with all of the matters raised by your drafts of contract with respect to hours of work, pay-
773 ment for overtime, Saturday and Sunday work, seniority, improvement in machinery, and improvement in working conditions, is that right?

A. It did deal, but it did not—

Q. Now, I am not asking you what it did not do. Tell me whether it did with all of those things to the extent they were raised by the contracts you submitted to the management.

A. Repeat that question again.

Mr. Swiren: Read the question.

(The question was read.)

A. That letter?

Mr. Swiren: Yes.

Mr. Walsh: I object, if the Examiner please, because a comparison of the contract and the letter would indicate that better than anything the witness could say.

Trial Examiner Dudley: I think the contract and the letter are certainly the best evidence, but if Mr. Kondrath knows whether or not this letter deals with all of the points presented by the contracts, he may so state.

The Witness: Let me read some of these. It has been so long ago since I have read it, that I can't remember everything.

Mr. Swiren: If the Examiner wants the contract that has been offered in connection with this, here it is.

The Witness: Mr. Examiner, as far as I understand this letter, one time somewhere back in July—

774 Mr. Swiren: Just a moment. This question can be answered very directly, without any speeches.

The Witness: I can't answer, unless I go back to that history; I won't answer you otherwise.

Mr. Swiren: I think he ought to answer the question.

Trial Examiner Dudley: I think it is a rather complicated question, involving a comparison of the two documents.

Mr. Swiren: Let me split it up.

Trial Examiner Dudley: That is something you and I can do better than he can.

Mr. Swiren: I will split it up.

The Witness: I didn't go to law school, or high school.

Mr. Swiren: You are a pretty good musician, though, are you not, John?

The Witness: That is all right. I am a musician. Can you read music?

Mr. Swiren: Yes.

The Witness: Then I will go and play with you.

Mr. Swiren: You may do that.

The Witness: That is all right.

Mr. Walsh: If the Examiner please—

Trial Examiner Dudley: What was the question?

Mr. Swiren: Let me break it up.

Trial Examiner Dudley: Proceed.

775 Q. (By Mr. Swiren) With respect to the matter of improvements in machinery, safeguards for comfort, health and safety, and other working conditions, the latter announced that the company will do all of the things requested by you during your conference on the 10th of September, is that right?

A. We had it in the contract, so they had to answer it.

Q. They did say they would do that?

A. Sure.

Q. They would do it all?

A. They would do it all except recognize the union.

Q. They agreed to everything with respect to the—

A. Contract.

Q. (Continuing) —working conditions, and safeguards for safety, health and comfort?

A. Yes.

Q. And everything with respect to the 40 hour week, and time and a half for overtime; that had been going on before that anyhow, had it not?

A. (No answer)

Mr. Swiren: He nodded his head indicating "Yes."

Q. (By Mr. Swiren) The same is true with respect to seniority?

A. Not that I know of, seniority.

Q. They covered their—the company's—position on the subject of seniority, is that right?

776 A. (No answer)

Q. Look at the letter.

Trial Examiner Dudley: Mr. Swiren, if you are going to merely ask him what the letter contains—

Mr. Swiren: No, I am not.

Trial Examiner Dudley: (Continuing) —I will overrule you, because the letter is perfectly good evidence of what it says.

Mr. Swiren: I am trying to cover the question of how much of the demands were actually granted, and what he understood about that.

Trial Examiner Dudley: I will exclude questions which ask for the contents of the agreement or the contents of the letter, or a comparison between the contents of the two.

If you want to ask him about his understanding concerning these documents at that time—

Mr. Swiren: I think we have, your Honor.

Trial Examiner Dudley: (Continuing) —that might be permissible.

Q. (By Mr. Swiren) I take it then it is your understanding that this letter granted everything you asked for in your contract except recognition?

A. Yes.

Q. Is that right?

A. Yes.

777 Mr. Walsh: I object to that.

Trial Examiner Dudley: I will overrule the objection.

Mr. Walsh: I move that the answer be stricken out.

Q. (By Mr. Swiren) Now, referring to the meeting on September 17th at Mr. Anselm's office, that was arranged by appointment, was it?

A. No.

Q. You were waiting for him when he came in in the morning?

A. Just a minute.

Q. Is that right?

A. Just a minute.

Trial Examiner Dudley: Let me inquire: did you say "February 15th"?

Mr. Swiren: I said "February 17th."

Trial Examiner Dudley: Very well; proceed.

The Witness: I did arrange for that meeting in a way, but I didn't find Mr. Anselm in his office. I met him in another—in the experimental laboratory, and I had talked to him, and he said to me that any time the committee wants to come over, to come on over.

Q. (By Mr. Swiren) You took that as an invitation to come over on the morning of the 17th, and you were waiting for him when he arrived?

A. That is correct.

Q. That committee was empowered to bargain collectively for the union, was it?

778 A. Yes.

Q. Who empowered it?

A. The lodge.

Q. When was that meeting held?

A. That meeting was held—well, it was held a night or so before.

Q. Who was present at that meeting when the committee was authorized?

A. Who was what?

Q. Who was present? Who was at the meeting?

A. The lodge.

Q. Only the members of the lodge?

A. Yes.

Q. Nobody else?

A. Oh, yes.

Q. Who else was there?

A. Well, Meyer Adelman was there. I guess that is what you want to know.

Q. I want to know everybody who was there.

Mr. Walsh: I object.

The Witness: I don't know everybody.

Mr. Walsh: I object to that as not being material.

Q. (By Mr. Swiren) How many men were there? How many women were there, who were not members of the lodge?

779 A. There were, I would judge, in the neighborhood of—between 85 and 90 or probably better, I don't know.

Q. That is, a total of that many men and women?

A. Yes.

Q. There were some women present, were there not?

A. Yes.

Q. Did that meeting authorize your committee to take any action if it did not succeed in getting your requests granted?

A. It did authorize the committee.

Q. To do what?

A. It gave the committee full power to act as it sees fit.

Q. Without limitation?

A. No limitations.

Q. Was there a strike vote taken?

A. Where?

Q. At that meeting of the union?

A. No.

Q. Was there a vote taken among the members of the union before the 17th?

A. What the lodge voted was the power of the committee to go and see the management for collective bargaining, and recognition of the union, and to do as they saw fit, if they didn't.

Q. That was the only authorization you had?

A. As far as I know.

Q. Were there minutes kept of that meeting?

780 A. Yes.

Q. Who has those minutes?

A. The corresponding secretary must have them.

Q. Who is corresponding secretary?

A. Edward Ruck.

Q. He testified he resigned, or was replaced two months ago. Did you know about that?

A. No, I didn't.

Q. As president, you assume he is corresponding secretary?

A. Yes.

Q. Has he been keeping minutes of the meetings recently?

A. Not recently.

Q. Who has been keeping minutes?

A. Well, we haven't had hardly any meetings lately.

Q. Who kept the minutes of the last meeting?

A. One of the members was asked to keep the minutes.

Q. Who was that?

A. Roy Brown.

Q. Roy Brown?

A. Yes.

Q. When Mr. Anselm came into his office, your committee then walked in behind him, is that it?

A. No. He asked us to come in.

Q. He asked you to come in, and you did?

A. Yes.

781 Q. He told you the company's policy had not changed, is that correct?

A. That is correct.

Q. He told you that they had set out their policy in a letter to all employees, and there was no change in that policy?

A. He didn't mention anything about the letter.

Q. Are you sure of that?

A. Pretty sure.

Q. You would not say definitely it was not mentioned would you?

A. I don't remember it being mentioned, about the letter.

Q. Then Mr. Anselm went upstairs to see Mr. Aitchison at somebody's suggestion?

A. Yes.

Q. He came back after he had gone upstairs, and said, "No, there is no change in the company's policy"?

A. No, and that Mr. Aitchison will not come down and meet with us.

Q. Then after your afternoon session, you went out in the chemical building and held a meeting, is that right?

A. That is right.

Q. Whose permission did you get for the use of the chemical building for that meeting?

A. Nobody's. We were only in there for two minutes.

Q. But you held your meeting there and did not ask anybody whether you could use it, or not?

782 A. How long after that meeting did you occupy buildings 3 and 5?

Mr. Walsh: I object to that as not being material.

Trial Examiner Dudley: Objection overruled.

The Witness: What was the question?

Mr. Swiren: Read it.

(The question was read.)

A. Until the 26th day of February.

Mr. Swiren: No.

Q. (By Mr. Swiren) How long after you left Mr. Anselm's office—withdraw that.

What time thereafter did you take over buildings 3 and 5, what hour of the day?

A. Around 2:30.

Q. About 2:30?

A. Yes.

Q. Was the decision to occupy buildings 3 and 5 made by your committee in its meeting in the chemical building?

A. It was.

Q. Then members of the committee spread through the plant to advise some of the others, is that right?

A. That is right.

Q. And to tell the foreman and the men who were not in your group to leave the plant, is that right?

783 A. I don't remember about the foremen.

Q. You remember that the group went and told the foremen to leave the plant?

A. I don't remember telling the foremen to leave the plant.

Q. You do not remember telling anyone, or hearing any of the foremen told to leave the plant? You do not remember someone saying, "We have shut down the plant. There will be no more work here"?

A. I don't remember.

Q. Well, where did you go after you left the chemical building?

A. I went upstairs.

Q. Where?

A. Upstairs in the tool room.

Q. Of what building?

A. Building 3.

Q. You went up into what floor?

A. The second floor.

Q. The second floor?

A. Yes.

Q. What departments are on the second floor?

A. There is the tool room, the machine shop, and tantalum fabricating department.

Q. Did you see any of the foremen on that floor?

A. Yes.

784 Q. Who did you see?

A. I seen Jack Wells.

Q. Jack who?

A. Jack Wells.

Q. Did you see anyone else?

A. No.

Q. No one else?

A. I have seen fellows there, members.

Q. No other foremen?

A Not that I can recall.

Q. You did not see Mr. Chisholm at all, did you?

A. I?

Q. Yes, you. Did you say "No"?

A. No.

Q. Is that your answer?

A. Yes.

Q. Did you see any of your committee men or other associates shut off the power?

A. No, I didn't.

Q. What did you do when you got up to the second floor of building 3?

A. Well, when I got up there, the members said, "What is the answer"?

Q. What members?

A. The members of the union that was in the department.

785 Q. Who were those men?

A. Well, they were, some of them, on the committee.

Q. Well, who were they? Tell us their names.

A. Well, there was Garris, Devine and Silason. That is about all in that department.

Q. Then what did you do?

A. I said, the committee decided to protest, because they wouldn't recognize the union, and they didn't want to give us collective bargaining.

Q. Did you tell them what you meant by "protest"?

A. Certainly they knew it.

Q. What did you tell them?

A. That is all I did tell them.

Q. Did you use the word "protest" to them?

A. Yes.

Q. Nobody asked you what that meant?

A. Not that I know of.

Q. Nobody asked what you were going to do, and you did not tell them what you were going to do, is that right?

You say "No"? I did not hear your answer.

A. No.

Q. You did not explain what action you were going to take with respect to that protest, did you?

A. Well, they said, "Well, what shall we do?" Some says, "Well, we will sit by the machines." The others

786 said, "We will sit down." Then everybody started going back and forth, and everybody was discussing something.

I didn't even get in on half of the discussions.

Q. Well, you told them, did you not, that the committee had decided in the chemical building meeting to take over buildings 3 and 5?

A. That is all right.

Q. Wait a minute.

A. There was three different departments up there, and there was people walking back and forth wanting to know what was going on, and everything was all excitement.

Mr. Swiren: Read the question please. Let us not get any excitement here.

The Witness: We might have some.

Mr. Swiren: Let us not have any excitement. Read the question.

(The question was read.)

Q. (By Mr. Swiren) Will you answer that?

A. I did.

Q. Did you tell them that?

A. I did.

Q. Then what did you do?

A. I didn't do nothing.

Q. You just stayed right at that point the rest of the day?

787 A. Just about.

Q. That was about 2:30 in the afternoon?

A. Yes.

Q. When were the doors barricaded?

A. I don't know. I wasn't down there.

Mr. Walsh: I object.

Q. (By Mr. Swiren) You did not go down?

Mr. Walsh: I object.

Trial Examiner Dudley: What is the ground of your objection?

Mr. Walsh: I object on the ground there is no testimony here that the doors were barricaded.

Mr. Swiren: This is cross examination.

Trial Examiner Dudley: Can you not ask him, Mr. Swiren, whether the doors were barricaded, and then when? That is the usual procedure.

Q. (By Mr. Swiren) Were the doors open, or were they barricaded in the afternoon and evening of the 17th?

A. I don't know. I was most of the time upstairs.

Q. As president of lodge 66, you were interested in what was going on, were you not, Mr. Kondrath?

A. Do you want to know why? If you want to know why, I will tell you.

Q. No. Answer the question.

A. Previous to that I was in the office, and worked 788 in the office. I wasn't allowed to go into that plant until just recently before that strike.

So, my interest was very limited, because I didn't know just what was going on in the shop as well as the rest of the fellows did.

Q. So you were not interested in what was going on in the building? You were not interested in what was happening in the building?

A. I wasn't very much interested, no.

Q. You were not interested enough to go down and take a look for yourself?

A. No, not until later.

Q. When did you go down, and what did you see?

A. Probably in the evening, towards dark.

Q. And were the doors open, or were they barricaded?

A. At that time they were.

Q. They were open?

A. Open.

Q. What was happening then?

A. Mr. Luther was coming in, and he wanted to know where Carl Swanson was, and so on.

Q. Was Carl Swanson in charge in that building?

A. I don't know exactly whether he was in charge there or not.

Q. He seemed to be, did he not?

789 A. Well, he went around to everybody asking for Carl, and asking for Carl, but there was nobody especially in charge.

Q. Did they ask him what to do, and what ought to be done?

A. No. There was a committee met there, and Mr. Luther asked whether the doctors in the laboratory could come back and do some work, or some testing.

Q. What did Swanson say?

A. Well, yes, they could come back and work; it was not necessarily Swanson. There was a committee there that instructed them that was all right.

Q. Then how long did you stay on in building 3?

A. I stayed upstairs practically until the first gas attack.

Q. When did you leave the building?

A. The 26th; the last gas attack.

Q. You stayed in the building from the 17th of February until the morning of the 26th of February, is that right?

A. I did.

Q. Were the machines running during that period?

A. No.

Q. Was there any production?

A. No.

Q. From the 18th through the 26th were any members of the management admitted to those buildings?

A. They didn't ask for admission to collective bargaining.

Mr. Swiren: Read the question, Mr. Reporter, please.

790 (The question was read.)

Mr. Walsh: I object, if your Honor please, as not being material to the issues involved in this case.

Trial Examiner Dudley. The objection is overruled. I will let him go into it, and see what is developed.

Q. (By Mr. Swiren) Were they all admitted?

A. On the 18th?

Q. From the 18th to the 26th.

A. Not inside of the building.

Q. And the sheriff and his deputies were not admitted during that period either, were they?

A. I don't know. I wasn't around the windows or the doors much.

Q. You never saw the sheriff in those buildings during that period, did you?

A. No, I didn't.

Q. You did not see his deputies in there?

A. I didn't.

Q. Were the foremen in the buildings then?

A. No.

Q. During that period?

A. No.

Q. Are there any women employed in building 3, regularly?

A. Yes.

Q. During normal operations?

791 A. Yes.

Q. And in building 5?

A. Yes.

Q. Were there any women in the building during the period from the 18th to the 26th of February?

A. From the 18th to the 26th?

Q. Yes.

A. No.

Q. What were you doing in the buildings during that period, Mr. Kondrath?

A. Well, part of the time we stood up, and when we got tired of standing up, we sat down.

Q. Did you eat in those buildings?

A. Yes.

Q. Did you sleep in the buildings?

A. We did.

Q. How many men were there in building 3?
A. In building 3, approximately about 85.
Q. How many were there in building 5?
A. Approximately around 40, 35 or 40.
Q. Were all the men in building 3, men who worked in building 3 regularly?
A. No.
Q. Were all of the men in building 5 men who worked in building 5 regularly?
792 A. No.
Q. After the meeting of the bargaining committee in the chemical building, did your committee or any of its members have any further meetings with Mr. Anselm or anyone else of the management?
A. No.
Q. Did you ask Mr. Aitchison or Mr. Anselm for permission to occupy buildings 3 and 5, and to move your beds and food in there?
A. No.
Q. Did you ask any officer of the company for that permission?
A. No.
Q. In fact, you never mentioned it to them, did you?
A. What?
Q. That you were going to occupy buildings 3 and 5, and move your beds and food in there?
A. Why should we? We protested for our collective bargaining and recognition of the union.
Q. Never mind why you should; did you?
A. I didn't, no.
Q. As far as you know, did any member of the committee do that?
A. Not that I know of.
Q. Mr. Anselm came to building 3 about four hours after the building was taken over, did he not?
A. I don't remember. I was upstairs.
793 Q. You have some information about that, have you not?
A. No.
Q. You remember testifying before the Circuit Court of Lake County that Mr. Anselm and I came to the building, building 3, about 6 o'clock in the evening after we were refused admission, and announced in loud voices that the men in the building were discharged?

A. I never heard you.
Q. Do you remember your testimony about that?
A. I remember the testimony, that I heard somebody make that remark in the building, but I never heard you.
Q. You were told?
A. No, I wasn't told. Somebody merely walked through the shop and said we were fired by somebody.
Q. For the purpose of refreshing your recollection, let me read you this statement, and I will ask you whether you made this statement under oath in the Circuit Court of Lake County,—this is a question that was put to you—:
Question: "And how was that discharge brought about, how did your employment end?" Tell me whether you answered as follows:
Answer: "Well, I heard—I wasn't present where this happened, but I was told that Mr. Anselm and Mr. Swiren had been at the back door of building 3, and they hollered in, 'All fired, all the people that is in this building.' "
794 A. I remember testifying that I said then that somebody came through the building and said that they fired us. I was in about the middle part of the building, and somebody came through.
Q. When was that, the evening of the 17th? Is that right?
A. Yes.
Q. That is when you were told that Anselm and Swiren had been at the window?
A. That is what I heard.
Q. You knew who Mr. Anselm was?
A. Yes.
Q. Were you told who Mr. Swiren was?
A. No. I didn't know you then.
Q. You have since learned—
A. Oh, yes.
Q. —that Mr. Swiren is counsel for the company?
A. Yes, I did.
Q. As soon as you heard that you had been discharged, you got up and left the building, is that right?
A. No.
Q. You stayed on?
A. Yes.
Q. Until the sheriff's gas came into the building on the morning of the 26th, is that right?
A. They didn't come in the building while I was there.
795 Q. After the sheriff appeared with his men and gas guns, you left, did you?

A. Yes. I went home.
Q. How did you happen to leave?
A. Well, that is a funny question to ask.
Q. What is that?
A. That is a funny question to ask. If you was there with me, you would have left the same way.
Q. I would not have gone in.
A. That may be.
Q. You told Mr. Aitchison and Mr. Anselm at various times that you had been asked to organize this union, or help get it organized, did you not?
A. Did I tell Mr. Aitchison?
Q. Yes, or Mr. Anselm.
A. I never told Mr. Aitchison that, I don't believe.
Q. You are sure of that?
A. Well, I am sure that I didn't tell them I was asked—there was no question brought up about that.
Q. Well, beginning in the middle of July—
A. Yes.
Q. (Continuing) —you brought it to the attention of the officers of the company that you were active in the union, did you not?
A. I did?
796 Q. Yes.
A. By request.
Q. Well, you appeared at a conference, did you not, in the middle of July?
A. Yes.
Q. This was a conference between you and some other members of the committee?
A. You are referring to the time when Mr. Aitchison, Mr. Luther, Mr. Lodell, and Mr. Troxel was present?
Q. Yes.
A. All right.
Q. There was no question but what you were active in the union organization, was there?
A. I was.
Q. At that time?
A. Yes.
Q. That was known at that meeting?
A. Yes.
Mr. Walsh: Will you identify the date, please?
Q. (By Mr. Swiren) That was when?
A. I don't remember the date.

Q. About the middle of July?
A. No, no; that was the last part of July.
Q. The last part of July?
A. Yes.
797 Q. Did you do anything since then to indicate that you have withdrawn from lodge 66?
A. No.
Q. Have you worked steadily—
A. What?
Q. (Continuing) —for the Fansteel Company during the last year?
A. Yes.
Q. Until when?
A. Until we got gassed out.
Q. You did not work from the 17th of February through the 26th, did you?
A. That was a protest.
Q. I say, you did not work, did you?
A. Well, we had to do some work.
Q. You did not do any production work, did you?
A. No production work, no.
Q. So that the last time you worked was February 17th, 1937, so far as the Fansteel Company is concerned, is that right?
A. Yes.
Q. Were you discharged during that period?
A. Well, you just had my testimony that I—
Q. I mean, before February 17th; before the evening of February 17th.
A. No.
798 Q. You testified yesterday that some of the men were worried, you might say, when you were called to the office of Mr. Radke.
A. Yes.
Q. Did you assure them when you got back that you had not been discharged, or even threatened with discharge?
A. Yes.
Q. You told them that?
A. Yes. I told them there was no need to worry. I said, "They didn't fire me, and I am still here."
Q. No member of your union was discharged during that period, were they?
A. No.
Q. Did you get any increase in salary, or hourly rate of pay?

A. Oh, yes; after we started to organize, then there was some increase made in pay.

Q. Did you get some?

A. Yes.

Q. Did you get some increase?

A. I did.

Q. Some of the other officers of the union got increases, did they not?

A. Well, I wouldn't say the officers, because there were practically—everybody was getting some in the plant there. Some of them was getting—those that they knew were not union members probably was getting more than those
799 that belonged to the union.

Q. You say "probably". You do not know, do you? You do not keep the records, do you?

A. No.

Q. You do not go around checking the pay envelopes, do you?

A. No. That was just rumors.

Mr. Swiren: I ask that the rumors go out.

The Witness: All right.

Mr. Swiren: Let the facts stay in.

The Witness: All right.

Mr. Swiren: If the Examiner does not mind.

Trial Examiner Dudley: The Board will so note, when it reviews the testimony.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: May we have a short recess, if the Examiner please?

Trial Examiner Dudley: I will announce a recess for about five minutes.

(Thereupon a recess was taken, after which the hearing was resumed in the court room of the Circuit Court of Lake County.)

Trial Examiner Dudley: Let us proceed, gentlemen.

800 Mr. Walsh: Mr. Examiner, I want to offer at this time in evidence the charter of lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America. I would like to request that we withdraw this exhibit, and have a typewritten copy made which will contain all the printed matter in the charter. We will then offer that in evi-

dence instead of the charter itself, and substitute it for this exhibit.

Mr. Swiren: We have no objection.

Mr. Walsh: It will be marked, I think—

Mr. Swiren: You are not going to try to reproduce the drawings, are you?

Mr. Walsh: The drawings, the eagles and other figures will be omitted.

Trial Examiner Dudley: There being no objection, this document will be marked Board's Exhibit No. 16 for identification, and the typewritten copy may be introduced as Board's Exhibit No. 16.

(The charter referred to was thereupon marked Board's Exhibit No. 16 for identification.)

Mr. Walsh: Mr. Carl Swanson. This witness has been previously sworn, your Honor.

CARL ANDREW SWANSON, recalled as a witness on behalf of the National Labor Relations Board, being previously sworn, testified further as follows:

801 *Direct Examination.*

Q. (By Mr. Walsh) Mr. Swanson, you were a member of the negotiating committee of lodge 66, were you not?

A. Yes, sir.

Trial Examiner Dudley: Just a moment.

Mr. Walsh: I beg your pardon.

Trial Examiner Dudley: Just a moment, please. Let the record show, Mr. Reporter, that Mr. Swanson has been called as a witness previously, was sworn, and has claimed his privilege.

Proceed, Mr. Walsh.

Q. (By Mr. Walsh) You were present at a meeting between the negotiating committee of lodge 66 and the management of Fansteel Corporation on September 10th, 1936?

A. Yes, sir.

Q. Will you tell the Examiner just what occurred at that meeting? Will you also tell who was present representing the lodge, and who was present representing the management?

A. The committee was composed of president John Kondrath, recording secretary Edward Ruck, Clarence Dreyer, vice-president, I believe, at that time, Frank Latz, Angelo Galbavy and myself.

Q. Who was representing the management?

A. Mr. Anselm, plant superintendent.

Q. Had this committee been empowered by the lodge to bargain for it?

802 A. Yes, sir.

Q. To bargain for the various members collectively?

A. Yes, sir.

Q. That authorization had been given at a meeting of the membership of the lodge?

A. Yes, sir.

Q. Will you tell what happened at that meeting? Tell what the committee said to Mr. Anselm, and what Mr. Anselm said to the committee.

A. The spokesman, I believe, of this committee, presented a tentative or proposed agreement of lodge 66 for collective bargaining, working conditions, and other matters along that line, and committees to be set up at later times, I believe, for the discussion of wages, hours and so forth.

Q. What did Mr. Anselm say about the contract?

A. Well, the contract—Mr. Anselm read it over, and we discussed it. He said that there was conditions in there he thought was fair; he thought that the contract was fair, everything except lodge 66.

He says that they couldn't give us that recognition, but otherwise he said he believed he could give us everything that was in there, and even some things that weren't in there; but not recognition of lodge 66.

Q. At that time did he say anything about your organizing your representation plan in the plant?

803 A. There was a leaflet or booklet, I believe, discussed at that time about an E. R. P., or something like that, they called it, that they had at the American Steel & Wire Company, I believe.

Q. I hand you what has been marked for identification Board's Exhibit No. 13. I will ask you whether or not that is the leaflet you received from Mr. Anselm at that time.

A. Well, it was a pamphlet on the order of this here. I wouldn't say it was exactly the same thing, but it was a pamphlet on the order of this one here.

Q. It contained the representation plan of the American Steel & Wire Company?

A. Yes.

Q. The Waukegan works?

A. Yes.

Q. What did he say about your organizing a similar representation plan?

A. He asked members of the committee if they couldn't take that back and discuss it with the employees, and give it consideration, if that wouldn't fit our plant better.

Q. You mean, fit your plant better than an outside union?

A. Yes.

Q. Later did you receive some literature from the company about a proposed representation plan?

A. Well, I believe that there was notices posted in the
804 buildings, and also that there was notices mailed to individuals.

Q. I will hand you what has been marked for identification Board's Exhibit No. 15. I will ask you whether or not that literature was delivered to members either personally or by mail.

A. Yes, sir.

Q. That was delivered to the employees of the company?

A. Yes, sir.

Q. Do you remember about when that was delivered?

A. That was delivered some time between—in the middle of September or around there.

Mr. Swiren: What was the answer, please, Mr. Reporter.

(The answer was read.)

Q. (By Mr. Walsh) About this time, around about September, or maybe before that, had there been attempts by various people to talk with the management about grievances they had in the plant?

A. You mean, as individuals?

Q. Yes.

A. I can't recall at that time, sir.

Q. All right. Now, how did you go about drawing this particular contract that was submitted to the company on the 10th of September?

A. The committee had various contracts, that is, tentative contracts of other organizations and so forth. The
805 foundation of it was gotten by asking the members their plans, and what they thought. It was their express desires, the way they thought it would be best operated.

Q. How did you figure out which was best for each department?

A. Well, there had been committees from each department. Members were supposed to have been contracted, and to have given their expressions as to what they thought would be

needed, or should be stipulated in this contract as to working conditions, wages, hours and so forth.

All of their expressions were supposed to be molded into one, and applied as to all of them generally.

We weren't trying to pick out every little thing, but were trying to cover the plant generally. Of course, in some departments, if they had something that was worse than in another department, some fault, that fault of course was supposed to be identified itself.

Q. Did Mr. Anselm refuse to treat with you as an outside union?

Mr. Swiren: That is objected to. I ask that counsel be directed to ask the questions,—

Mr. Walsh: I will withdraw it.

Mr. Swiren: —and not answer them.

Mr. Walsh: I will withdraw it. I am sorry.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh) What did Mr. Anselm say to you
806 about recognizing lodge 66?

A. He said they couldn't recognize lodge 66. There was a discussion there at the meeting by different members. He asked different members different questions.

There was mention of what rights we thought we had, and so forth, and mention of the Wagner labor laws and various things like that.

Q. Now, getting on to September 21st, I believe there was another meeting between representatives of lodge 66 and the company.

Would you tell the Examiner about that meeting.

A. We went to the management's office after lunch, and went into the office. As we approached the secretary's office, someone in the office that works there upstairs, addressed me, and I spoke to him.

He asked me a few questions, and the rest of the committee had gone in to Mr. Schultz' office. Somebody called to me to come in, and I said, "Just a minute, until I get through talking to this gentleman. I will be right in."

It was just a second longer, and then I came in. When I came into the office, Mr. Anselm, the plant superintendent, was there, and there was confusion.

It seemed that there was some misunderstanding or something, and I heard the expression "Get out." to Mr. Adelman.

Q. Who addressed that expression to Mr. Adelman?

807 A. Mr. Anselm. He was walking back and forth in back of his desk. I escorted Mr. Adelman out to the wait-

ing room, and told him I would bring word to him whether we would be allowed to meet with him or not.

I went back in, and we discussed the matter there, and we tried to explain to Mr. Anselm that this committee had been informed a meeting had been arranged for this committee with the management, and he said no, absolutely no, that there had been no meeting arranged, not that he knew of.

I said, "If that is the case, there has been a misunderstanding, and I wish to apologize for this committee. We do not have anything further." He said that if the committee wanted to talk, he was willing to meet the committee any time; but we said we were there as a committee from the union with our representative, and that it was the understanding there was to be a meeting, but if there was to be no meeting, and had been no meeting arranged, we would excuse ourselves.

I apologized, and then I went to inform Mr. Adelman that there had been no meeting, and that we had to disperse and go back and get out. So we did.

Q. Did you present a contract of any kind at that time?

A. No. We didn't present anything, I do not believe, at that time. What took place before I got in there I don't know, but up until the time I got in there, there hadn't been any contract presented to my knowledge.

808 Mr. Swiren: May I have that question, please?

(The question was read.)

Q. (By Mr. Walsh) Did you present a contract of any kind at that meeting on the 21st of September?

A. I don't remember whether the members had presented one before I came in there or not. I don't remember just what took place at that time.

Q. Now, referring to this paper that I have just handed you, do you recall what that document is?

A. This is the agreement we went over again and revised.

Q. That is—

A. We was going to present that to the management.

Q. That is an agreement that was revised after the refusal on September 10th?

A. Yes.

Q. Is that right?

A. Yes.

Q. Do you know whether that was presented to the company?

A. I couldn't say for sure. I am under the impression it was, but I don't know when.

Mr. Walsh: All right. I will offer this in evidence.

Mr. Swiren: Which one is that?

Mr. Walsh: That is that revised contract.

Mr. Swiren: Yes. That was offered, so far as we know, on the 10th.

809 Mr. Walsh: That was the one offered on the 10th.

Mr. Swiren: That is my understanding.

Mr. Walsh: Will you mark this Board's Exhibit No. 17, please, Mr. Reporter.

(The document referred to was thereupon marked Board's Exhibit No. 17 for identification.)

Mr. Walsh: I offer in evidence, if the Examiner please, the agreement which has been marked BOARD'S EXHIBIT NO. 17 for identification.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be so admitted.

(The document referred to was received in evidence and marked Board's Exhibit No. 17.)

Q. (By Mr. Walsh.) Now were there any attempts by the committee of the union to meet with the management between the 21st of September, 1936 and the 17th of February, 1937?

A. Inclusive?

Q. Between those two dates did you try to meet with the management?

A. Yes, sir.

Q. On what dates, do you recall?

A. February 17th.

Q. Well, were there any attempts made between the 21st of September the February 17th?

810 A. I do not believe there were.

Q. All right. Now, getting on to the 17th of February, 1937, will you tell the Examiner what occurred at the meeting between the committee of the lodge and the management.

A. The committee of lodge No. 66 met Mr. Anselm in his office.

Q. At what time of day?

A. Well, around 8:30, or somewhere around there.

Q. In the morning?

A. In the morning.

Q. All right. Who was on the committee?

A. That was a large committee. John Kondrath, Ed Ruck, Harold Dreyer, Charles Warner, Frank Zelenick, Roy Brown, Angelo Galbavy, Fred Hensly, Reginald Ross, Walter Bunton, Stanley Grum, Robert Pratt, Frank Latz, and Steve Ark.

I believe there was one or two members absent. I am not positive now.

Q. The committee consisted of the officers of the union, and representatives from each department, did it not?

A. Yes, sir.

Q. Had that committee received any instructions from the lodge?

A. Yes, sir.

Q. What were those instructions?

A. The committee was given full power to attain collective bargaining for lodge 66, and union recognition.

811 Q. In the event the committee did not obtain those things, what was the committee empowered to do?

A. Their will; their wish.

Q. Now, you met Mr. Anselm on the morning of the 17th, about 8:30; what did he say to the committee, and what did the committee spokesman, or whoever spoke for the committee, say?

A. The spokesman explained to Mr. Anselm that this committee was over there to get collective bargaining for lodge 66 and its members, employees of Fansteel, and that they wanted a definite answer; that the members of the lodge felt that the committee on previous occasions had not been insistent upon their demands, and that we were letting the company push us around, and we were not sticking up for their rights as they considered them under the Wagner labor law.

Mr. Swiren: Who was the spokesman, may I ask, for the record, Mr. Walsh?

Mr. Walsh: We will—

The Witness: I could not recall who was spokesman.

Mr. Walsh: I will try to find out.

Q. (By Mr. Walsh) Go ahead, Mr. Swanson.

A. Mr. Anselm said, I believe, "We have given you our answer, and it still stands", and something in respect to that matter.

Other members of course asked question, and they said they were pleading with them to give us recognition, and begging them and that the members of the union were putting us

812 on the spot; they demanded we do something.

He said there was nothing he could do, but finally he said that there was one thing left he would do for us. He said it would be all right if he would go and ask Mr. Aitchison. He said he couldn't promise us anything, and one of the members said, "Won't Mr. Aitchison come and see us, and talk to us?"

He says, "I will go up there and find out for you what I can." He said, "I can't promise you anything." So, he went upstairs, and then he came back and told the committee to come back in the afternoon some time, and he would have an answer for us. He said he couldn't guarantee us anything, and he wouldn't promise us anything, but he would have an answer of some sort for us.

The committee finally after talking among themselves there, agreed to that proposition.

Q. That you would come back in the afternoon?

A. That we would come back in the afternoon.

Q. Did you return in the afternoon?

A. Yes.

Q. Now, will you tell us what happened at that time.

A. In the afternoon we met in Mr. Anselm's office, and Mr. Anselm said that the answer was the same.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) Mr. Swanson, who was spokes-
813 man on the occasion of the visit to Mr. Anselm's office on September 10th?

A. September 10th?

Q. Yes.

A. I believe Mr. Ruck was the spokesman.

Q. What did Mr. Ruck say, if anything, to Mr. Anselm with reference to the union, or about the union?

A. Well, there was a discussion that covered a lot of words. I believe he introduced the tentative proposal or agreement, and after that just what took place was talk about a union, and so forth.

Q. Was there any discussion of what the union was, who was in it, and so forth? Was there any discussion of that sort of thing, the identity of the union?

A. The identity of the union was known as lodge 66 and its members.

Q. I know, but—

A. Of the Fansteel Metallurgical Company.

Q. It was known to you. Was it made known to Mr. Anselm? Was there anything said along that line?

A. I believe when the contract was presented, that that was included in the statement that this was a committee from lodge 66, of employees of the Fansteel Company with this tentative proposal or agreement for their consideration.

Q. Well, did you say anything to Mr. Anselm as to who was in the union?

814 Let me explain that question by saying that, as I understand it from your previous testimony not everybody in the plant was in the union at that time.

A. I don't recall. There was a discussion at that time more upon our rights to have the union, and unionism, and our request for unions, than anything else.

Who was in the union at that time—I don't believe there was any discussion about that. I wouldn't say for sure.

Q. Membership cards were not displayed to Mr. Anselm, were they?

A. No, sir.

Q. No authority, written authority from the union was given to Mr. Anselm at that time, or exhibited to him?

A. Well, that tentative agreement—whether it was signed by the officers of the committee at that time I couldn't say. I would not say as to that.

I should imagine it was signed. I do not know whether it was or not.

Q. The charter was never presented to him, was it? A charter was never shown to him, is that not right?

A. Mr. Anselm never requested to see a charter.

Q. You did not show it to him, did you?

A. It was never requested, sir, and it was never shown.

Q. Did you say to him anything about how many men were eligible for this union?

815 A. Not at this meeting; I don't believe there was anything mentioned at all.

Q. Was anything said to him as to whether or not you would include laboratory workers, foremen, and office workers?

A. Only what was in the contract; if that was in this tentative contract, that proposal, it might have been discussed.

Q. Otherwise not?

A. Otherwise, I couldn't say; I couldn't say what was discussed at that time outside of this contract, and our union.

Q. A closed shop was discussed at that time, was it not?
A. I couldn't say it was, at that time, at that meeting.
Q. Was the check-off system discussed?
A. If it was in the contract, it might have been discussed.
Q. Did not Mr. Anselm say at that time that no one—or words to this effect—working for the Fansteel Company would be compelled to join the union against their will?
Is that right?
A. What Mr. Anselm said as to statements to that effect, I couldn't say. The only thing I can say is we went in there with this contract. It was discussed generally by the men, and by Mr. Anselm. The proposal of this other employees' representation plan, the E. R. P. or whatever it was called, that was discussed, and lodge 66 was discussed.
Now, there was general discussion. If that was said there, I don't remember it.
816 Q. You did not say to him there, "Well now, this represents the wishes of 86 men; we have 86 men here at this time"?
A. It was the wishes of the members of lodge 66.
Q. But you did not say to him, "We have 86 men who want this". You did not say anything like that to him, did you?
A. If there was anything said at that time like that, I can't remember it, sir.
Q. I believe you testified yesterday that at this time, September 10th, there were 86 members in the union?
A. I won't say there was only 86; there probably was more than 86, at that time.
Q. But—
A. To my knowledge, at that time, I mean.
Q. I believe, as I recall it—I put it down here—you said there were not over 160 eligible at that time?
A. I believe so, sir.
Q. Were you counting among the men in the union at that time, men who were in the protest, as you call it, and occupied buildings 3 and 5, who have since gone back to work in the company?
Were a number of those men included in the membership at that time?
A. What percentage was included at that time—.
Q. I am not asking you about what percentage. I mean, were those men included, or some of those men?

817 A. Some of those men were.

Q. Are they still members of lodge 66, the men who have gone back to work, or have they dropped from membership in the union when they returned to work at the company?

A. There has been no action taken by the union as to their standing up until the present time.

Q. Have those men attended any meetings, those men we are talking about now who returned to work at the Fansteel Company?

Have they attended any meetings since, or taken any part in union activities at all?

A. You mean, these men that—

Q. Returned to work.

A. —returned to Fansteel?

Q. Yes.

A. Have they taken part in any meetings, or any union activity?

Q. Yes, since the 26th of February?

A. Since the 26th of February?

Q. Yes.

A. I believe that there was some members present at meetings. Whether they were on the picket line I could not swear as to that. What other activities they took in, I could not say, because it has not been routine.

Q. That is your best recollection, that immediately after February 26th they were not in the picket line?

818 A. Who was in the picket line at first, down there, I don't know, because I wasn't down to the picket line until a long while afterwards, a couple of weeks anyhow, or three weeks.

Q. Have any of those men paid dues to the union since they went back to work?

A. I couldn't say that, either, whether they have or not, now.

Q. Do you know where the books and records of the union, of lodge 66 are now?

A. I do not, sir.

Q. There was a time when Ed Ruck was secretary, recording secretary of the lodge, was there not?

A. Yes, sir.

Q. He is not acting as such, or in such capacity, and has not so acted for some few months now, is that correct?

A. Well, Mr. Ruck has been absent from most of our meetings, and he has not acted in that capacity.

Q. I believe yesterday you testified that he had left the books in your custody when he ceased to act in that capacity, is that correct?

A. They were left, I believe, at the hall, with instructions probably—I might have been told he had left them there. I couldn't say exactly.

Q. Were you present at the time he left them?

A. I wouldn't say; it has been quite a while ago.

Q. Now, with reference to your own books, as financial
819 secretary, I assume you have some as financial secretary; do you know where they are?

A. No, sir.

Q. Where did you last see them?

A. In Slovenik Hall.

Q. How long ago?

A. I couldn't tell you the exact date, whether it is a week or two weeks.

Q. Well, approximately.

A. Anywhere from a week to two weeks.

Q. Where were they in Slovenik Hall?

A. In our lodge room down there.

Q. Were they locked in a safe? What precaution did you take to see that they were kept intact, and to see that they were kept together?

A. A party was going to take care of them for me.

Q. Who?

A. A party.

Q. What we are trying to do is trace the whereabouts of those, Mr. Swanson. I am therefore pressing this inquiry: who was the party?

Mr. Walsh: I object as not being material.

Mr. Keele: Well, those books and records, Mr. Examiner, I believe will be material.

Mr. Walsh: If they become material, they probably
820 will be produced.

Mr. Keele: The fact is, we need them right now, in order to properly examine every witness who has testified here. We have been placed under a handicap by the fact that we do not have them present, although they have been requested by subpoena.

We are trying to lay the foundation so they can be properly subpoenaed. In order to subpoena them, we have to know where they are.

Mr. Walsh: I know of no proceeding in which the defend-

ant is entitled to have witnesses called, prior to his time to present his evidence, to produce records.

Mr. Swiren: This witness has testified with respect to a number of things which makes it necessary for us to have those documents to cross-examine him on.

Trial Examiner Dudley: You can use your subpoena duces tecum when the proper time comes.

Mr. Swiren: I can not think of anything more important to the questioning of the accuracy of the witness' testimony as to the matters contained in his records than where the records are, if there are such records, and what has happened to them.

It seems to me that they are the best evidence. We ought to know whether they exist, and if so, where they are. We want to know where they are. Are they in existence, or are they not?

821 Trial Examiner Dudley: I am inclined to think you overemphasize the importance of them at this time.

Mr. Swiren: No.

Trial Examiner Dudley: Even if a subpoena were issued, if the witness did not have them, they could not be produced.

Mr. Swiren: I notice that when Mr. Walsh wants a subpoena served, it is served within 10 minutes. We have not been able to get them served for nine days.

Trial Examiner Dudley: That is nothing I have anything to do with. Ask your question. I do not object to that.

Mr. Keele: May I for the purpose of the record again state that without the records of the union, for which we have made application through a subpoena duces tecum, it is impossible for counsel to question this witness, and to check him as to the accuracy of his statements, and that the failure of the Board to issue the subpoena and the failure of the lodge to produce those records is highly prejudicial, in the opinion of counsel, highly prejudicial to the case of counsel.

If they are later produced, it does not make for an orderly record. As the Examiner will appreciate, whoever examines the record is after all presumably only a human being. Fatigue enters in, and it is impossible to have evidence introduced at the end of a trial, or toward the close of a trial, carry as much weight in the mind of the examiner of the record, or the examiners of the record, as though it were

822 introduced at the proper time. I submit again that the failure to issue the subpoenas and thereby compel the production of the books is highly prejudicial to our rights.

Trial Examiner Dudley: In response to that, I would say that the Examiner has nothing to do with the issuing of subpoenas, and even if subpoenas were issued, and the documents were in the court room, you would have no right to examine and use them at this time unless it was through the courtesy of the Board, inasmuch as this is not the proper time to call your witnesses, or put in your evidence.

Those documents could be lying there on the table now, and you would have no right to look at them unless Mr. Walsh was willing to let you look at them, because you cannot call witnesses or introduce documents until it is your time to put in your case.

Mr. Keele: We cannot examine him with reference to those books—

Mr. Walsh: He does need the records themselves, prior to the time he goes forward with his case.

Mr. Keele: We have a right to have them, in order to properly cross-examine the witness.

Trial Examiner Dudley: If you did have, and examined him with reference to them, it would be beyond the scope of the direct examination.

Mr. Swiren: How could anything be outside of the
823 scope of the direct examination, when the direct examination is the witness' recollection of what is in the records? Obviously we have a right to have the records produced, and question him concerning them.

Trial Examiner Dudley: The witness on direct examination has not introduced the exhibits. Manifestly counsel on cross-examination cannot examine on the exhibits until they become part of the testimony.

Mr. Keele: Of course, that is not correct.

Mr. Swiren: If the witness testifies as to the subject matter, we can certainly go into the basis for that testimony, namely, the records.

Trial Examiner Dudley: Not until the witness is your witness.

Mr. Walsh: When you get the records, you can call him as your witness.

Mr. Keele: Has the Examiner so ruled?

Trial Examiner Dudley: There is no need of going ahead on this. It is purely academic, and we are wasting time.

Mr. Keele: We do not think it is academic. We think it is a denial of our due process.

Trial Examiner Dudley: Do you have any further questions?

Mr. Keele: What was the last question?

(The question was read.)

Mr. Walsh: I object.

824 Trial Examiner Dudley: Objection overruled.

The Witness: I do not recall the party. It was one of the members down there that I gave them to, to see that they were placed in the hands of my wife at that time.

Q. (By Mr. Keele) Have you seen them since? That is the only thing I am interested in. Have you seen those records since?

A. I don't know where they are at the present time.

Q. That is the last time you saw them?

A. I wouldn't say whether she was requested during our trial to present the records to our attorneys at that time or not. I wouldn't say whether she had them up here for our attorneys or not.

Q. When you talked with Mr. Anselm on the—was it the 21st of September or the 22nd of September that you talked to Mr. Anselm?

A. Well, it is about that date; I wouldn't say exactly the date. It was around that time.

Q. The committee went in again at that time?

A. Yes.

Q. That was the same committee of six men; that is, Ed Ruck, John Kondrath, Clarence Dreyer, and Galbavy?

A. I would not say just exactly; there were about five or six men on that committee. I will say Ed Ruck was there, John Kondrath, myself, and who the remaining members

825 were, I can't say.

Q. At that time was there any discussion as to who the members of the union were, or how many members there were of the union? I am referring to the discussion with Mr. Anselm.

A. There might have been a discussion before I came in there.

Q. You did not hear any?

A. Not that I recall. All I can remember is what I said here.

Q. You testified a while ago I believe that at one of these meetings with Mr. Anselm—I have forgotten which one—there was some discussion as to your right to collective bar-

gaining under the provisions of the Wagner Labor Relations Act?

A. That was mentioned at one of the meetings, yes, sir.

Q. Which one? Was it the meeting of September 10th, or September 21st, or February 17th?

A. September 10th, I believe; I believe it was on September 10th that it was mentioned.

Q. What was said with reference to that?

A. Well, somebody had made a remark about the Wagner law, and Mr. Anselm wanted to know just what our definition of that was, or our understanding.

It was explained to him, I believe at that time, our definition and our understanding of it.

Q. Well, do you recall what was said?

A. Not exactly. In general the answer was that the
826 company would not consider the Wagner law as giving us those claims that we claimed for at that time.

Q. Now on the occasion of the meeting of September 21st between Mr. Anselm and the committee, was Mr. Adelman introduced to Mr. Anselm?

A. I could not say now. As I said before, when I came into the office I was late getting in there because I was detained in the outer office, or the waiting room, by one of the clerks or members of the firm from upstairs.

I couldn't say whether he had been introduced or not.

Q. Was there any statement made by Mr. Anselm to the effect that Mr. Adelman would have to go out and wait for an appointment in the reception room, or waiting room?

A. I couldn't say as to that. The only thing I can say is that Mr. Anselm wished to have Mr. Adelman get out of the office. That was the general conversation.

Q. Did he not say to him, "If you want to see me, you will have to present your card or make a request for an appointment"?

A. I don't recall that.

Q. You would not say that was not said, would you?

A. No, sir, I would not. I say, there was conversation before I came in there. What took place, I don't know.

Q. Now, with reference to February 17th, when the committee went into wait on Mr. Anselm, did he not tell you
827 that the policy of the company had been set forth in the letter which had gone out to all employees previous to that?

Did he not say that it was not changed, that the company had not changed its position?

A. I would not say that was the answer.

Q. Was not some reference made to that letter?

A. I could not say; I do not remember at this time whether there was or not.

Q. You went back at 2 o'clock?

A. Yes.

Q. Then what did you do, after you left the office of Mr. Anselm?

A. We went back inside of the fence, on to the plant proper.

Q. Did all the committee go along with you? Did the entire committee in other words, go back?

A. As nearly as I can remember, I believe they did.

Q. What did they do then when they got inside of the fence, the members of the committee?

A. Some said, "Well, what will we do," and somebody suggested "Let's go to one of the buildings to decide what answer we will give to the men when we come back," because the men in the plant were waiting for the answer. They were eager to find out what had taken place during the meeting.

Q. Then what happened?

A. It was suggested that we retire to the chemical building.

828 Q. Yes. You did that, did you not?

A. Yes, sir.

Q. Then what did you do in the chemical building?

A. Somebody suggested that we take a vote on the attitude of the members in response to the company's reply to our request.

Q. Then what was done?

A. A vote was taken.

Q. As to what?

A. As to we would do.

Q. What was the result of that vote? I mean, was it a unanimous vote?

A. As far as I can recall, I believe it was unanimous.

Q. What did the members of the committee vote to do?

A. To protest, by stopping work in a strike against the attitude of the management.

Q. That was all that was said?

A. That was.

Q. Did they say how they were going to protest?

A. By stopping work, and having a strike.
Q. They were all going to go home?
A. No, sir.
Q. Well, that is what I want to find out. What were they going to do? How were they going to have this protest? How were they going to have this strike? What were they going to do in pursuance of it?
A. Occupy certain buildings, that is, retire to certain
829 buildings and stay there.
Q. Stay there until when? How long would you stay there?
A. The members figured they would only have to stay there for a few hours.
Q. Were they going to work while they were there?
A. No, sir.
Q. Were they going to permit any work to go forward while they were in there?
A. No, sir. That was up to the individuals.
Q. Was it agreed as to who was to stay in the buildings, whether they would allow the women to stay in the buildings, or whether they would allow foremen to stay in the buildings, or whether they would allow company people to stay in the buildings?
A. Someone suggested that the women be asked to go home, so if it necessitated being there longer, it would not put us in a position—
Q. Of difficulty with your wives?
A. Wives, and their girl friends, and so forth.
Q. All right. In other words, they figured they might be there several days?
A. We didn't know, but we anticipated only being there a short time.
Q. You sent the girls home?
A. Yes, because it was late.
830 Q. It was 2:30 in the afternoon, was it not?
A. Around there, some time, yes.
Q. It was several hours before work stops ordinarily, was it not?
A. About an hour and a half or so.
Q. What do you mean by "late"?
A. Well, it was late in the afternoon. We did not want to have the girls there overnight, if it was necessary.
Q. And if it was necessary, you were prepared to stay there?

A. We were not prepared, no, sir.

Q. Then why did you send the girls home? I am trying to understand your answer, as to whether you thought it was necessary or not.

A. It was somebody's suggestion that it would not be proper for the girls to stay there.

Q. Was there any reason suggested why it was improper for the foremen to remain there?

A. No, sir.

Q. None of the foremen were women, were they?

A. Were any of the foremen women?

Q. Were any of the persons acting as foremen women? None of them were women, were they?

A. There was no foremen that were women. There was some foreladies, I believe.

Q. The foremen were not permitted to stay in there, were they?

831 A. I believe they were asked to retire.

Q. They were told to go out, were they not?

A. Well, I wouldn't say what they were told, Mr. Keele. There was confusion and excitement. It was something new to us that was upon us, and what was actually said and what was actually done is hard to state at this time.

Q. Did you hear any of the foremen ordered to get out, or told to get out?

A. I would not say they were told, or how they were informed, or how they were asked, if they were asked to get out, or to go.

I can't say at this time.

Q. Did you discuss that point previously with the committee?

A. As to the disposition of the foremen?

Q. Yes.

A. No, sir.

Q. Had you not determined that no foremen were to remain in the building?

A. Not to my knowledge, nor, sir.

Q. Did you discuss this matter with the foremen before you went into buildings 3 and 5, after you had had your vote in the chemical lab, or chemical building?

A. Whether the individuals had discussed it with them, I could not say.

832 Q. Did you or any member of the committee discuss it with the management of the company?

Mr. Walsh: Mr. Examiner, I would like to object to this entire line of inquiry on the ground it is immaterial.

I did make an objection when the same type of questions were asked of the other witness. I assume this objection will meet the same fate that the other one did.

I do not care to be interrupting all the time. I would like to have the record show I am objecting to the entire line of inquiry.

Trial Examiner Dudley: Overruled. How long do you think it will take to conclude, Mr. Keele?

Mr. Keele: I am willing to adjourn now, if you want to. I suppose it will take a few minutes. It is now twenty minutes to five.

It probably would be advisable to resume at the next session.

Trial Examiner Dudley: I think it is rather immaterial, but I will let you go into it for what weight it may have.

Mr. Keele: Well, your point was whether we had better try to finish up with this witness at this session, as I understood it.

Trial Examiner Dudley: Yes. Can you do it in five or ten minutes?

Mr. Keele: I think we can do it in five or ten minutes.

833 Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Keele) I believe the last question I asked was whether any member of the committee had discussed this with the management, taking over these buildings.

I will speed it up by asking, was the matter of taking over these buildings discussed with any member of the management, or officer of the corporation?

A. Whether any member had intimated that to Mr. Anselm in our meeting, I would not say. There was a lot of discussion, and there were some of the members giving lots of advice.

Q. It had not been voted upon at that time, had it?

A. No.

Q. After it had been voted upon, the men went to buildings 3 and 5, did they not, the members of the committee?

A. I don't think they did.

Q. Did they go back and call upon the management, and tell them what they had decided they were going to do?

A. No. I believe they went back to their respective departments.

Q. They did not go back and talk to the management about it, as far as you know?

A. Not to my knowledge, sir.
Q. They did not, you say?
A. No, sir.
Q. Did you get permission from the management to go in there and stay in the buildings?
834 A. I didn't have to get permission—
Q. Answer yes or no.
A. —to stay in there.
Q. Just answer yes or no.
A. No, sir.
Q. Now, shortly after you were in there, the doors were locked and barricaded, were they not?
A. The doors were—I don't know whether they were locked or not. I couldn't say as to that. At times they might have been barricaded, and at times they were open.
Q. A demand was made upon the men occupying the buildings, to leave, that afternoon?
A. I wouldn't say as to the exactness of that or not.
Q. Well, Mr. Anselm and Mr. Swiren came there that afternoon, did they not, and tried to get in?
A. I couldn't say as to that, either, just what took place.
Q. You mean, you do not know anything about what happened, or what was going on there?
A. That is a large building, Mr. Keele.
Q. Yes.
A. I was all over that building at different times, and what took place at certain times I can't testify to, if I wasn't there at the exact minute.
Q. About 6 o'clock in the evening you knew that Mr. Swiren and Mr. Anselm came there; you either saw them
835 or heard them, did you not?
A. Yes.
Q. You knew a request was made by Mr. Swiren and Mr. Anselm to get into the building?
A. I didn't know, sir, at the time, a request had been made.
Q. Did you know that they told the men at that time they were discharging those men who did not come out?
A. There was a statement made, but just as to the full effect of it, I could not say. It was something on that order.
Q. You know Mr. Swiren talked with you there at the window, do you not?
A. Yes, sir.
Q. Now—

A. Well, now, I wouldn't say whether it was Mr. Swiren or not.

Q. You have since learned it was Mr. Swiren, this gentleman sitting here to my left, have you not?

A. Is that Mr. Swiren?

Q. He is the man, is he not, who talked to you at the window?

A. I have never been introduced to the gentleman, sir.

Q. Let us get away from all of this "After you, Alphonse", and let me ask you, regardless of whether you had been formally introduced to the gentleman, was the gentleman sitting on my left the man to whom you talked that night through the window, about 6 o'clock?

836 A. I wouldn't swear it was him.

Q. You would not say it was not, would you?

A. I wouldn't say it wasn't him either.

Q. There was a man with Mr. Anselm there that night, was there not?

A. Yes.

Q. That man was the same man—the man with Mr. Anselm—there that night who handed in a written paper, is that not correct?

A. I don't recall, sir.

Q. You do not remember that?

A. No, sir, I don't.

Q. You remember going to the building there that afternoon, do you? Are you sure about that? Did you go into that building?

A. I think we went there.

Q. Are you any more certain about your meetings with Anselm and what he said than you are as to whether you went there that day, and as to whether or not you received a paper?

A. I remember—

Q. Answer yes or no.

A. I recall that, yes.

Q. You are more certain about that?

A. Yes.

Q. But you are not certain as to whether you received a paper, or whether you were in that building that day?

837 A. Sir, that building was filled with men. There were men all over. There was a few men in fact, arguing back there.

They were asking questions and talking, and exactly what took place I do not recall. The situation was very tense.

Q. Were you discharged at any time before that time that you saw Mr. Anselm accompanied by at least one of the men from the company?

You had not been discharged from the company prior to that time, had you?

A. (No answer.)

Q. Do you not remember that?

A. "Discharged"—that is a classification I don't—

Q. Had you been fired prior to that time?

A. No, sir, not to my knowledge. No, I haven't been fired.

Q. You did hear the gentleman with Mr. Anselm there that evening about 6 o'clock tell you, or tell the men in the building in a loud voice that every man who did not come out was fired, did you not?

A. That, as an exact statement, I can't say. I said, there was men asking me, "What are they saying? What are they doing? Who is out there?", and so forth.

Q. Well, in substance you heard him say that, did you not?

A. I couldn't say—I couldn't swear to what Mr. Swiren said that evening out there.

838 Q. Well, you did not know Mr. Swiren. You mean the gentleman with Mr. Anselm?

A. The man you claim is Mr. Swiren.

Q. I do not claim he is Mr. Swiren; I say, the man with Mr. Anselm.

A. As to the man with Mr. Anselm, I wouldn't swear as to what he said.

Q. You did not hear him say anything to the effect that every man in the building was discharged?

A. I would say he did, and I wouldn't say he didn't. His exact statement I can't recall.

Mr. Keele: That is all.

Q. (By Mr. Walsh) What was the purpose for which the members of lodge 66 occupied these buildings?

Mr. Swiren: That is objected to.

Mr. Walsh: I will withdraw it.

Mr. Swiren: If the testimony is that there has been an illegal act, it does not make any difference why they did it.

Mr. Walsh: I will withdraw the question.

Trial Examiner Dudley: Is there anything further of this witness?

(No response.)

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: We will adjourn at this time 839 until 9:30 A. M. Monday morning.

(Thereupon, at 4:45 o'clock P. M., Friday, June 11, 1937, an adjournment was taken until Monday, June 15, 1937, at 9:30 o'clock, A. M., in the court room of the Circuit Court of Lake County, County Court House, Waukegan, Illinois.)

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843 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Monday, June 14, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

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844 PROCEEDINGS.

Trial Examiner Dudley: Are you ready to proceed, gentlemen?

Mr. Walsh: Yes.

Trial Examiner Dudley: You may proceed.

Mr. Walsh: Mr. Examiner, at this time I would like to offer in evidence certain economic data in the form of tables furnished to me by the Division of Economic Research of the National Labor Relations Board. These tables should have been properly included in Board's Exhibit No. 1.

I will offer in evidence as Board's Exhibit No. 1-J table No. 1, entitled "Rank of Chemicals Industry in the United States."

I also offer in evidence as Board's exhibit No. 1-K table No. 2, entitled "Rank of Chemicals Industry in Illinois."

I offer in evidence as Board's exhibit No. 1-L table No. 3, entitled "The Chemicals Industry: Rank of Illinois."

I offer in evidence as Board's exhibit No. 1-M table No. 4, "Sources of the Ores of Rare Metals."

I offer in evidence as Board's exhibit No. 1-N table No. 5, entitled "The Flow of the Products of the Chemicals Industry."

These tables are collected from various sources in Government publications. I ask that they be admitted in evidence. I have furnished counsel with a copy of the tables. They will be subject to his further check and correction, if the in-
845 formation therein contained appears to be erroneous.

Mr. Swiren: We object.

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: Yes. I do not think it is incumbent upon us to check to find out whether there has been any error or not. I think it is incumbent upon the man who is producing evidence to produce accurate evidence.

With respect to all of these instruments, they are merely copies somebody prepared. Nobody knows who prepared them or what the basis of their accuracy is. It is incumbent upon the proponent of the exhibit to establish its accuracy, and it is not the duty of the defendant to challenge it.

With respect to exhibit 1-J, in addition, it has reference to the chemical industry. The same is true with reference to exhibit 1-K. The same is true with respect to 1-L. We are not in the chemical industry in any respect. We have nothing to do with it, except in common with thousands of others who buy some chemicals. The same is true with respect to 1-N. It has further reference to chemicals and the chemical industry.

Radio apparatus is also casually mentioned in exhibit 1-N, and motor vehicles and parts.

With respect to exhibit No. 1-M, it purports to be a casual discussion of the sources of rare metals. The testimony here shows that our metals are not always purchased at the source.

846 As a matter of fact, the biggest supply of tantalum ore is purchased from an intermediate party, and there is no possible connection between the information on that exhibit and our case.

Trial Examiner Dudley: They may be admitted in evidence for such weight as testimony that they may have.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 1-J, 1-K, 1-L, 1-M, and 1-N.)

Mr. Swiren: Has the examiner seen the exhibits? I think it might be helpful, before we have a ruling, for the examiner to see them.

Trial Examiner Dudley: I have a very good idea of what they are, from Mr. Walsh's description of them.

Mr. Walsh: Mr. Examiner, at this time I would like to introduce in evidence certain application cards of various individuals. These application cards are the cards signed by the individual members when they applied for membership in the Amalgamated Association of Iron, Steel, and Tin Workers of North America.

I will introduce them in three separate groups, or at least refer to them in three separate groups.

There are 84 cards which have a date on them prior to September 10, 1936. There are, I believe, 16—

Mr. Swiren: Do you want to identify that as a separate group, now?

847 Mr. Walsh: I beg your pardon?

Mr. Swiren: Do you want to identify that by an exhibit number?

Mr. Walsh: Yes. I will ask to have this marked for identification as Board's Exhibit No. 18.

(The documents referred to were thereupon marked Board's Exhibit No. 18 for identification.)

Mr. Walsh: I would like to do this, for the purpose of the record: I would like to withdraw the actual cards, after counsel has had an adequate opportunity to check them, and furnish a typewritten list showing the name of the person and the date upon which that person applied for membership in the organization.

The cards being permanent records of the organization, I would like to exhibit them, let counsel check them, and then substitute the typewritten list.

Mr. Swiren: What about making photostats? You could spread them out, and get eight or nine or ten on a page. That

will give us an opportunity to check the signatures, which a list would not.

Mr. Walsh: My thought was this: I can turn them over to you, and let you check them, and satisfy yourself—

Mr. Swiren: And then substitute a list?

Mr. Walsh: —and then substitute a list.

Mr. Swiren: All right.

848 Trial Examiner Dudley: Can you make photostats of those?

Mr. Swiren: We can do it, yes.

Mr. Walsh: You can do that, if you so desire.

Mr. Swiren: All right. Of course, I am not consenting to the admission of these exhibits yet.

Mr. Walsh: No.

Mr. Swiren: I want to see what all of the exhibits are.

Mr. Walsh: Board's exhibit No. 19 will be another group of cards, 18 in number, no one of which bears a date as to when the person whose name appears thereon applied for membership. So far as this group of cards is concerned, I will endeavor during the course of the trial to check up with the individuals and ascertain on what date they did join the union, and supply that information for the record.

I would like leave, after counsel has had an opportunity to check these, to withdraw the cards and substitute a list for that group.

(The cards referred to were thereupon marked Board's Exhibit No. 19 for identification.)

Mr. Walsh: Board's exhibit No. 20 will consist of a group of cards of the same nature as the last group, all of which cards are dated subsequent to the month of September, the last date, I believe, being March 11th. Most of these cards, an examination will show, were dated prior to February 17th.

849 (The cards referred to were thereupon marked board's Exhibit No. 20 for identification.)

Mr. Walsh: As to this exhibit, I would like to turn the cards over to counsel and permit them to check them, and substitute a typewritten list in the same manner as the others.

Mr. Swiren: Do you now offer the exhibits? ——

Mr. Walsh: I now offer all of these exhibits in evidence.

Mr. Swiren: We object to the offer. I want to make my grounds perfectly clear. We think the cards ought to go into the record, but we think they ought to be introduced in the proper way.

Someone ought to identify them. We ought to know where they came from, and we should have some evidence as to authenticity. In addition to that, there ought to be such supplementary and complementary evidence as may be necessary to indicate the date of acceptance of those applications, and the extent to which any or all of them may now be in force, as far as membership or authority is concerned.

In other words, the whole picture ought to be presented instead of just a few cards offered by counsel. We ought to have an opportunity to examine the witness who testified to the authenticity of these records, and also examine the records which complement and supplement the cards, and bring them up to date.

I think they ought to remain as exhibits for identifica-
850 tion only, and not be received in evidence until the remainder of the necessary evidence is presented.

Trial Examiner Dudley: I assume, Mr. Swiren, from what you said before, that these cards are part of the material for which you wanted a subpoena?

Mr. Swiren: That is part of it, yes.

Trial Examiner Dudley: So you really do want them in evidence, just as soon as we can get proper verification?

Mr. Swiren: I want verification, and also additional records which will bring these up to date, so that we know whether there were any changes, whether these dates are accurate, whether the memberships ended at any time, or whether they were rejected at any time.

I do not want these out of the record. I want the record complete. They all ought to go in. They ought not to hold back some of the records that are important.

Mr. Walsh: You really are not objecting to these, are you, Mr. Swiren?

Mr. Swiren: I am objecting.

Trial Examiner Dudley: You are really asking for more evidence in addition to these, are you not?

Mr. Swiren: I am asking that enough evidence be brought in before they are offered, to establish their authenticity, if they have any, and to show whether they were in force on the respective dates they suggest they were in force. We do
851 not know. The cards cannot tell us.

We do not know where those cards were. We do not know about the signatures.

Trial Examiner Dudley: I will admit them as evidence, subject to consideration by the Board, of not only the cards

themselves, but of whatever additional evidence may later be given during the course of the trial which will verify the cards.

(The cards referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 18, 19, & 20.)

Mr. Walsh: What disposition will the examiner make as to my request to substitute a list of these cards with the dates on it, after counsel has had an opportunity to examine the cards and check them?

Mr. Swiren: As long as we have an opportunity to check them, and make photostats, we have no objection to that.

Trial Examiner Dudley: Very well. The motion is granted, on that condition.

Mr. Walsh: I will turn them over to you, then.

Mr. Swiren: All right.

Mr. Walsh: As soon as Mr. Lester Collins is available, he desires to enter his appearance as attorney for Lodge 66 in this case, such appearance being provided for by article 2, section 25, of the rules and regulations.

Mr. Swiren: Read that statement, please, Mr. Reporter. I did not hear the first part of it.

852 (The record was read as above recorded.)

Trial Examiner Dudley: Have you any objection, Mr. Swiren?

Mr. Swiren: There has not been any appearance offered yet. So far as I know, Mr. Walsh just made a statement of general interest.

He has always told me that Mr. Collins is not his co-counsel, so I presume Mr. Collins will make his own application.

I might suggest that we take a short recess, until they complete the review of the appellate court hearing.

Trial Examiner Dudley: We will take a short recess pending the return of Mr. Keele.

(A short recess was taken.)

Trial Examiner Dudley: The Board will reconvene its hearing.

Mr. Swiren: I might say, during the recess I have had an opportunity to see some of these cards that were offered in evidence. I notice that some of them are cards of dead men, and others departed from this part of the country, or the employ of the company, for a considerable period of time prior to any of the problems that arose here.

I am wondering whether, under the circumstances, the examiner would not reconsider his ruling and ask that the offer

be accompanied by some evidence of the authenticity and present status of those cards.

Trial Examiner Dudley: Well, I assume, Mr. Swiren,
853 the cards at least indicate an application of membership as of the date they were signed.

Mr. Swiren: I do not know that they even do that. I found some of the cards were all in one handwriting. A number of them are in the same handwriting, so I assume that they were not signed by the various individuals; those were not, at least.

All the way through, I think there is about as complete a lack of evidence as to what portion of the cards are worth while and trustworthy as we could possibly have and still have cards here.

Trial Examiner Dudley: My previous ruling was that they be admitted and be considered by the Board in connection with such supplementary evidence and testimony that might be given. I think that should stand. We will so consider them in the future, in connection with testimony such as you are mentioning now.

Mr Swiren: I take it that my application for the reconsideration of the examiner's ruling is overruled?

Trial Examiner Dudley: Yes.

Mr. Walsh: May I proceed, Mr. Examiner?

Trial Examiner Dudley: Call your witness.

Mr. Walsh: Mr. Dreyer.

CLARENCE DREYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

854 *Direct Examination.*

Q. (By Mr. Walsh) Will you state your full name, please?

A. Clarence Dreyer.

Q. You will have to speak up a little bit, Mr. Dreyer.

A. All right.

Q. What is your address?

A. 1833 Elisabeth Street, North Chicago.

Mr. Swiren: Speak up a little louder, please.

Trial Examiner Dudley: There are a lot of people who want to hear you. Keep your voice up, please.

Q. (By Mr. Walsh) You are presently confined to the county jail on an order of the Circuit Court of Lake County, are you not?

A. I am.

Q. You are appearing here in response to a subpoena by the National Labor Relations Board?

A. I am.

Q. You are appearing here of your own free will?

A. I am.

Q. As far as your present appearance is concerned?

A. I am.

Mr. Walsh: Mr. Examiner, Mr. Collins is still engaged in the other matter now going on in the Circuit Court. I will ask the examiner to ask the witness if he desires to claim
855 his privilege.

I think he understands what it is. I have explained it to him, and I think he understands what his privilege is.

Trial Examiner Dudley: Mr. Dreyer, do you wish to claim your privilege of immunity which is given to you under the Act, for any wrongful acts you may have committed about which you testify during this hearing?

The Witness: I do.

Trial Examiner Dudley: It is so granted.

Q. (By Mr. Walsh) Mr. Dreyer, I believe you were a member of the negotiating committee that called upon the company at various times?

A. I was.

Q. Were you a member of the committee that called upon the management of this company in July of 1936?

A. I was.

Q. Will you just tell the examiner in your own words what took place at that conference?

A. Well, there was four of us that were elected to go over to the office. There was Carl Swanson, John Kondrath, Ed Ruck, and myself.

The purpose we were going over there for was to ask for permission to post a notice on the bulletin board of a meeting we were going to have. We got over there, and we asked the management for their permission. They said they could n't
856 give us that permission.

I just don't remember what was said, but anyhow the argument led into union and union was discussed. I guess the meeting must have lasted about an hour or so. Ed Ruck suggested we come over to ask permission to post the notices, and the company refused.

Q. What were those notices about?

A. Well, there was going to be a meeting of Lodge 66 that

was going to be held on August 5th. At this meeting the officers that had been elected were going to be installed. We wanted to post a notice of this meeting to notify all the employees of what was going to take place.

Q. Previous to this meeting, had the men in your department certain grievances against the company?

A. Yes.

Q. What were those grievances?

Mr. Swiren: I object to that. I do not think this witness ought to be brought in here to testify to stories he may have heard from other people, nor can I see any materiality, as to whether there were grievances or not.

Either the Act was violated, or it was not violated. Whether these men had any grievances, or thought they had any grievances, in the latter part of July has no materiality to the issues involved here. There is nothing in the pleadings to justify it. There is nothing in the Act to justify it. There
857 is nothing in the regulations even to justify it.

Trial Examiner Dudley: I think, Mr. Swiren, grievances, or beliefs that they had grievances, might well indicate, perhaps, and explain some of the actions taken by the employees in the forming of a union, and approaching the company and discussing with them the matter of posting the notices.

Mr. Swiren: There is no obligation on anybody's part to permit company property to be used for union organization purposes without the consent of the company.

Trial Examiner Dudley: That is not the point of the question.

Mr. Swiren: Therefore, whether the company refused permission had not any materiality. It certainly cannot be material, whether these men thought they had some grievances last July or not.

Trial Examiner Dudley: I will overrule the objection.

Mr. Walsh: Read the question, please.

(The question was read.)

A. Well, just prior to the time the union was started, they had two efficiency men come down the . It was our understanding they were there to improve chinery and improve the process of the work, and different things like that.

They were working in our department, and they had figured out ways they wanted us to work. They had cut down our rate of pay—

858 Mr. Swiren: Just a moment. We object to any sum-

maries of that kind. If he is permitted to go into this matter, he ought to say what was said, and by whom, so it will be susceptible of proper inquiry on our part.

Trial Examiner Dudley: I will ask the witness to be as specific as he can.

Q. (By Mr. Walsh) Mr. Dreyer, what department did you work in over there?

A. I worked in the cutting department.

Q. That cutting department does what?

A. It cuts tungsten disks.

Q. For contact points?

A. Yes.

Q. That is sometimes referred to as the contact cutting department, is it not?

A. Yes.

Q. Do you know the names of these efficiency men?

A. I cannot recall their names at the present time. I did know them, but I can't recall them.

Q. As a result of the studies that these gentlemen made, were there certain changes made in your work?

Mr. Swiren: That is objected to. This witness does not know—

Trial Examiner Dudley: He may answer, if he knows.

Mr. Swiren: Just a moment.

859 The Witness: Yes, there was.

Mr. Swiren: Just a moment. I think the examiner ought to hear my objection. The efficiency experts unquestionably did not report to this witness. Unless he knows what they reported, or upon what basis any changes were made, he ought not to be permitted to speculate.

Mr. Walsh: I am afraid you do not understand the question.

Mr. Swiren: Yes, I do.

Trial Examiner Dudley: Read the question, Mr. Reporter, please.

(The question was read.)

Trial Examiner Dudley: He may answer.

A. There was.

Q. (By Mr. Walsh) Did these efficiency men say anything to you about the amount of work you were doing, and the amount the company expected you to do?

A. They did.

Q. What did they say to you?

A. Well, they figured out that— I don't know how to explain it.

Q. Just explain it in your own way, Mr. Dreyer.

A. We were put on what they call the standard. The standard they put us on was the amount of production we had been turning out daily. In order to make the money
860 we were making, we had to turn out half again as much production as we were. That is what our grievances were about.

Q. Now, what, in figures, was the standard that you had been working on?

A. Well, our average day's work standard was around, between 12,000 and 13,000 disks a day.

Q. In order to make the same rate of pay, you had to produce more, did you?

A. All the way from 15,000 to 16,000 disks a day.

Q. Did you attempt at any time to discuss this matter with the management of the company?

A. We did.

Q. Who did you try to see, or who did you talk with?

A. The plant superintendent, Mr. Luther Henry.

Mr. Swiren: Speak louder, so I can hear you.

The Witness: The plant superintendent, Mr. Luther Henry.

Q. (By Mr. Walsh) What did Mr. Henry say?

A. We called him in our department. We asked the foreman if we could talk to him. He arranged for the superintendent to come in and see us.

We argued with him about the way they were cutting our wages. One thing led to another; we were all men that had worked there from 15 to 20 years, and he practically told us all we had was a job, and that our length of time we had put in with the company didn't mean nothing.

861 He said that our job was only worth so much an hour, and if we thought we could find anything better we should take it.

Q. How long have you worked for this company, Mr. Dreyer?

A. Approximately 17 years.

Q. Now, were you a member of the committee that called upon the management about September 10th?

A. I was.

Q. Will you tell us who was there representing the management?

A. Mr. Anselm.

Q. By the way, who represented the management in that meeting in July, do you remember?

A. There was Mr. Aitchison, Mr. Troxel, Mr. Dow, and Mr. Henry. That is all I recall.

Q. Now, getting back to this meeting of September 10th, will you tell the examiner just what took place on that day?

A. Well, we had drawn up an agreement that we wished to present to the company. This agreement was drawn up by departments. Every department had a meeting, and each department's agreement was put into one agreement.

We were selected to take this agreement over to the office. We went to the office and met Mr. Anselm. I believe Edward Ruck was the spokesman. He handed Mr. Anselm the contract, and Mr. Anselm read it.

He sat there for a few minutes and didn't say nothing.

Pretty soon he told us the contract was a fair contract;
862 that in time the company would be able to give us everything that was in that contract, except union recognition. If I remember rightly, we discussed the different things that were going on around the plant.

Mr. Anselm had just come back, and he asked every man from his own department what seemed to be the trouble in that department. We discussed matters of that sort.

Q. Was there anything at that time said about the representation plan of the American Steel and Wire Company?

A. Yes, there was.

Q. What was said at that time?

A. Well, Mr. Anselm had some copies of that plan they had at the wire mill. He gave us some of them copies. We talked about that, and he asked us if we would take them back to the plant and show them to the employees.

He said that he could give us a contract as good as that, or as good as the one we presented to him, if not better.

Q. I will hand you what has been marked Board's exhibit No. 13. I will ask you if that is one of the pamphlets that he handed out on that date.

A. Yes.

Q. I will hand you now what has been marked Board's exhibit No. 15. I will ask you what that is, and how that came into the possession of the men?

A. This is a copy of—we received that from the man-
863 agement. Each individual received one of these, in the plant, in the interoffice correspondence envelope.

Q. Do you remember about when that was?

A. I can't remember the day. It was just a few days

after we had presented that other contract, and he had gave us the employees' representation plan.

Q. Well, was that everything that was said and done on September 10th, that is, relative to the meeting between yourselves and the company?

A. I don't recall anything else.

Q. Were you a member of the committee that represented the union in a conference that took place about the 21st of September?

A. I was.

Q. Who was there from the company?

A. Mr. Anselm.

Q. Was there anybody with the committee besides the members of the union?

A. There was Carl Swanson, Ed Ruck, John Kondrath, myself, Frank Latz, and Meyer Adelman.

Q. Will you tell the examiner just what happened at that conference?

A. Well, I was told that morning that there was going to be a meeting of the officials of the company right after dinner, and that we should be there at 1 o'clock. So, at that 864 time, we started from our individual departments, and headed for the office. We all met out in front of the office, and we went in in a group.

When we entered the office I saw William Schultz, and he asked us what we wanted. We told him we wanted to see Mr. Anselm, and he showed us into Mr. Anselm's office. Mr. Anselm was not in when we entered, but he came in a few minutes after we had been there.

Ed Ruck introduced Mr. Adelman to Mr. Anselm. Then Mr. Anselm inquired about how Mr. Adelman had gotten in there. Ed Ruck explained to him how he got in there, and Mr. Anselm told Mr. Adelman he could get out, that he could go out in the outer office and enter in the proper way.

There was quite a few things said there that I don't recall.

Q. What did Mr. Anselm say, if anything, regarding recognition of the union?

Mr. Swiren: That is objected to. The witness said that there was not anything more said that he could remember. I do not think Mr. Walsh ought to do the testifying.

Trial Examiner Dudley: Read the answer to the last question, please, Mr. Reporter.

(The answer was read.)

Trial Examiner Dudley: The witness may answer.

Mr. Walsh: Read the last question, please, Mr. Reporter.

865 (The question was read.)

A. After Mr. Adelman had left, and gone out in the outer hall, he told us he was willing to talk to us any time as employees, but that he wouldn't have any outsiders, as he called them, in his talks.

Then there was some discussion about the meeting we were supposed to have, and I understand that—well, I don't know. There was a mixup there some way. He claimed there was not supposed to be a meeting. We were informed there was.

It finally ended up that there wasn't any meeting. We went back to the plant and went to work.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Mr. Dreyer, you referred to a meeting with the management in July 1936. Can you place that for us, during the month? What part of the month was it in?

A. The last part of the month.

Q. The union was formed; that is, Lodge 66 was formed about the 4th of July, is that right?

A. Sometime around that, yes.

Q. Your grievances, you testified to, occurred before that, and were things that led up to the formation of the Lodge, is that right?

A. That was a short while before.

Q. When would you say that the grievances arose with
866 respect to the efficiency men, Mr. Dreyer? Would June be a correct approximation?

A. I believe the day they came in there, and it was explained to us what they was doing—I believe the date was June 8th.

Q. That was put into effect on—

A. June 8th.

Q. The program was put into effect about that time?

A. Yes.

Q. Beginning on the 8th?

A. Yes.

Q. How long did that reduction in your compensation last?

A. As nearly as I can remember, Mr. Henry asked us to try it out for a few days and see how it worked, which we did. I can't recall how many days it was, how long it was.

Q. Would you say that you worked under that system that the efficiency men proposed for as long as a week?
A. Yes, I think so.
Q. Would you say it was as long as 2 weeks?
A. I don't recall.
Q. You would not say it was as long as a month, would you?
A. No. It wasn't that long.
Q. After Luther Henry told you to try it out, you came back and told him it was not working satisfactorily, is that right?
A. Yes.
Q. Then he made a change, and restored the original
867 arrangement, is that right?
A. No.
Q. What did happen?
A. That is when he told us that all we had was a job.
Q. He refused to make any change?
A. He did.
Q. That arrangement that the efficiency men installed continued from then on, is that right?
A. It went on for a few days, and then we had another talk with him.
Q. What happened during that conversation?
A. Well, it was right after that that the union started—
Q. No, no. Tell me what happened when you talked to Luther Henry the second time.
A. The second time, the efficiency men had already been let out.
Q. What did you tell Luther Henry?
A. We asked him about making an adjustment in our wages, and he told us he would see what he could do.
Q Did he tell you then that all you had was a job?
A. Not the second time.
Q. Did he tell you that you could not have any adjustments?
A. Not the second time.
Q. When was that meeting, by the way, Mr. Dreyer?
A. That was—
868 Q. That was in June, too, was it not?
A. I believe it was.
Q. Did anything happen with respect to restoring your cuts?

A. Yes. They gave us a little raise. I can't recall just what it amounted to.

Q. Right after you saw Luther Henry?

A. A few days after that.

Q. How did it work during July? Was your compensation better during July?

A. If I recall, we had one other talk with him—

Mr. Swiren: No, no, no. You did not get my question. I did not ask you about any conversation.

Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: Mr. Examiner, I object to this line of inquiry as not being material to the issues.

Trial Examiner Dudley: I will overrule the objection. I will permit Mr. Swiren to bring out what he can through this questioning.

Mr. Swiren: We want to bring out all the facts, not half of them.

The Witness: Repeat the question, please.

Mr. Swiren: Read the question.

(The question was read.)

A. It was better than what the efficiency men had set down.

869 Q. (By Mr. Swiren) Well, all of the reductions were subsequently adjusted, within about 30 days, were they not?

A. No.

Q. No?

A. They never were adjusted to what they were before.

Q. Were any of the adjustments that were made, made retroactive? Do you understand what I mean?

A. (No answer.)

Q. Were they dated back to the date the change was made?

A. The first one was, but the second one was not.

Q. The first one was dated back, so you made up some of the amount that had been cut?

A. Yes.

Q. Is that right?

A. Yes.

Q. Do you recall what percentage was made up, and what percentage was not?

A. I can't recall just what it was.

Q. If I told you your compensation during July 1936 was

almost double what it was during June 1936, would you say that was incorrect?

A. That would be wrong.

Q. If I were to say the same thing about your compensation so far as June and May 1936 were concerned, would you still say I was wrong?

870 A. I don't understand you.

Mr. Swiren: I will withdraw the question.

Q. (By Mr. Swiren) Did you earn more money during July 1936 than you did during May and June 1936?

A. No.

Q. You did not?

A. I can't tell you—I can't answer that question, because I don't know how we worked in May.

Sometimes we weren't busy. We stayed home for a few days.

Q. What about June? Did you earn more during July than you did in June?

A. I can't recall.

Q. You are sure you did not earn 1½ or 2 times as much, is that right?

A. For the amount of time I put in, if I remember rightly, I think it was less.

Q. How about August? Did you do better in August than you did in June or May?

A. I can't recall.

Q. During the fall and winter of 1936 and 1937, did your production rate go down in the cutting department, the production rate per man?

A. I don't understand your question.

Q. Did each individual man start cutting less disks during November, December, January, and February?

871 A. No.

Q. You think production stayed up?

A. Production gradually went up in the fall.

Q. Now, the organization, Lodge 66, made no effort to reduce the quantity of disks cut per man, did they?

A. No.

Q. There was no concerted effort made to cut down production in that department, was there?

A. I don't know what you mean.

Q. Well, did you men get together and decide that you were producing too much, or too little, and change the production rate at all?

A. We didn't. We always done our work the way we had been used to do it.

Q. There was no change, then, during that period; you are sure of that?

A. When these efficiency men set the standard—

Q. No, no. Never mind the efficiency men. I am talking about the production during November, December, January, and February. That ought to be easier to remember than what happened last July.

A. Our production, as near as I can remember, was higher than what it had been previously.

Q. After your second conference with Luther Henry, did you make any further complaint about piece rates?

872 A. Yes.

Q. When, and to whom?

A. To Luther Henry.

Q. When?

A. I can't remember just how many days later, but it was shortly after the other.

Q. There was another adjustment after that, then, was there not?

A. There was.

Q. Did you make any complaint after that?

A. Yes.

Q. When?

A. About a week after that.

Q. Were there any adjustments after that date?

A. There has been no further adjustments after that third time.

Q. That third time was when?

A. That third time was when they refused us any other adjustment.

Q. What month was that in?

A. I believe it was in August. I am not sure.

Q. August 1936. You had no adjustments from that time on until February 17th, when you left your work, is that right?

A. There was no adjustment.

Q. You are sure of that?

873 A. Yes.

Q. There is no doubt in your mind at all?

A. As near as I can remember.

Q. You were interested in what rates—

A. I was.

Q. —you were getting for your work, were you not?

A. I was. I recall on one job—when they adjusted these prices, there was one job they had failed to make any adjustment on.

I remember talking to Mr. Anselm about that one job.

Q. He adjusted it?

A. He adjusted that job, so compared with the others.

Q. He ran the adjustment back, did he not?

A. No.

Q. You do not know about that, or do you?

A. I don't recall that.

Q. When was that?

A. I can't recall the day, or the time.

Q. But there was no general adjustment, after—

A. No.

Q. —August 1936, as far as you know?

A. Not that I recall.

Q. You would know if you had an adjustment in your rate, would you not?

A. I can't remember dates. All I can recall is there 874 was two adjustments made after the efficiency men had put us on that standard.

Q. Those were made right after the change had been made cutting down on your standard, is that right?

A. Yes.

Q. That is, within 30 days, or thereabouts? Is that right?

A. I don't remember how far apart they were, or the number of days.

Q. It was within two months, any how, is that right?

A. I should say that, yes.

Q. How many disks did you say you were generally cutting per day before the efficiency men came in?

A. That is hard to say. There was different jobs, and we cut different amounts of disks.

Q. You gave a figure to Mr. Walsh. Can you give me one?

A. Well, on a 150-diameter rod, I think we cut between 12,500 and 13,000 disks.

Q. Per man, per day?

A. Yes.

Q. Are there any other sizes that you remember?

A. I can't recall the exact figures.

Q. Do you know how many disks were being cut per man or per woman, by the operators in other plants?

A. Only what we were told by the management.

Q. You did not have any information of your own?

875 A. No.

Q. You do not know whether that is high or low, compared to other plants?

A. As far as myself personally, I can't say.

Q. All right.

A. Because I hadn't seen or heard.

876 Q. You do not know whether the percentage of rejects that you men had, rated high or low compared with other plants, do you?

A. The only way is what some one had told me.

Q. Do you know whether—strike that out, please.

In cutting your discs you use a wheel, a cutting wheel, is that right?

A. Yes.

Q. One of the problems in cost, is how many cutting wheels are consumed for a given number of discs, is that right?

A. Yes.

Q. You do not know how many wheels you used per thousand, compared to the operators in other factories, do you?

A. Only what we were told.

Q. By the efficiency men?

A. By the efficiency men, and the management.

Q. Now, going to the meeting of September 10th, were you an officer of the union at that time?

A. I was.

Q. What office did you hold?

A. I held the office of vice-president.

Q. You had been elected vice-president at the inception of the union, is that right?

A. Yes.

Q. Are you still vice-president?

877 A. No.

Q. When did you stop holding that office?

A. Shortly after the meeting of the 21st with the company, or the proposed meeting.

Q. Did you resign voluntarily?

A. Yes.

Q. Was there any problem about the acceptance of your resignation?

A. No.

Q. It was promptly accepted?

A. Well, they asked me if I wouldn't hold that office, and I told them I didn't care for it.

Q. Who asked you?
A. The members.
Q. Did Mr. Adelman speak to you about that?
A. I believe he did.
Q. Do you know what he said?
A. I don't recall what it was.
Mr. Walsh: Mr. Examiner, I fail to see the materiality of this particular line of inquiry.
Mr. Swiren: We have just been inquiring—
Mr. Walsh: I think it should be relevant to some issue.
Trial Examiner Dudley: What are you striving at, Mr. Swiren?
Mr. Swiren: I suggest that you confine your remarks
878 to objections to specific questions, so we can have something to talk about in common, instead of just saying "line of inquiry".
Q. (By Mr. Swiren) At the meeting of September 10th, did you receive a copy of the employes' representation plant of the American Steel & Wire Company which appears in this record as Board's exhibit No. 13?
You received personally a copy of it, is that right?
A. Yes.
Q. Did all the other members receive copies?
A. All the members that was on that committee in the office, yes.
Q. Each one received one copy?
A. They received more than one.
Q. They received a number of them?
A. A dozen or so.
Q. A dozen or so of these little blue books?
A. Yes.
Q. Did anybody ask for more than one copy?
A. I don't recall that. We were asked to take them back to the employes.
Q. Well, after Mr. Anselm showed the committee one copy, did not one member of the committee say "Have you any more copies we can have?"
A. I don't recall that.
879 Q. You would not say that was not said, would you?
A. I don't recall.
Q. It may have been said, is that right, so far as your memory is concerned?
A. I said, I don't recall.
Q. What I am trying to find out whether you are certain

it was not said. You just do not have any memory on the subject, is that right?

A. I don't know whether it was said, or whether it was not said. It was not said to me.

Q. How many were in the room as the committee?

A. Four.

Q. So you would hear it; it would be addressed to the committe, is that right? Any remarks made by the management would be addressed to the committee?

A. Not necessarily. I was looking the thing over and probably if somebody said anything, I wouldn't be paying any attention.

Q. You may have been engrossed in reading the pamphlet itself, is that right?

A. That is right.

Q. Do you know whether anybody asked, anybody in your committee asked for more copies of the employes representation plan, a copy of which has been introduced as Board's exhibit No. 15?

880 A. No.

Q. You do not know whether those were asked for?

A. I don't think they were, because each individual received one.

Q. They were all right there; a large number of copies were available, is that right?

A. They were brought over to the factory, and handed to us by our foreman.

Q. I am talking about the meeting. Were they handed to you at that meeting?

A. The one you just showed me?

Q. Yes.

A. No.

Mr. Swiren: The witness is now referring to Board's exhibit No. 15.

The Witness: They were handed to us in the inter-office correspondence envelope. Each employe received it from his or her foreman.

Q. (By Mr. Swiren) That was not handed to you at the office meeting on the 10th?

A. No.

Q. Was a copy shown to the committee?

A. Not of that one, that was typewritten, no.

Q. You say "No"?

A. No.

881 Q. Now, going on to the meeting of September 21st, your committee of four or five men and Mr. Adelman entered the office building; you came into the lobby first, is that right?

A. That is right.

Q. Did you stop at the information window?

A. No.

Q. You did not stop there?

A. We were in the hall and Schultz was standing there in the hall when we came in.

Q. Then you opened the door going toward Mr. Anselm's office, is that right?

A. No. We talked to Mr. Schultz, and he lead us in.

Q. You passed through Mr. Schultz' office before you reached Mr. Anselm's office, is that right?

A. Yes.

Q. That is separated from the lobby by a door?

A. That is right.

Q. You opened that door, and walked in, and Mr. Schultz was there?

A. Mr. Schultz was in the lobby when we came in.

Q. Oh; Mr. Schultz was in the lobby?

A. Yes.

Q. Did you tell him what you wanted? Did you tell him you had an appointment with Mr. Anselm?

A. Ed. Ruck was the spokesman. I believe he did.

882 Q. He said he had an appointment with Mr. Anselm, is that right?

A. I don't recall the words he said.

Q. Is that correct, in substance?

A. I know he asked to see Mr. Anselm.

Q. Did he say he wanted to see Mr. Anselm, or did he say he had an appointment to see Mr. Anselm?

A. I don't recall.

Q. You are not sure?

A. I don't recall.

Q. You do not personally know whether or not, there was an appointment made with Mr. Anselm, do you?

A. I was informed there was.

Q. You personally did not make it, or hear it made, did you?

A. I didn't make the appointment myself, no.

Q. Who told you it was made?

A. The other members of the committee.

Q. At the meeting Mr. Anselm said he knew nothing about an appointment, is that right?

A. That is right.

Q. By the way, at the meeting of September 10th, was there anything said about a closed shop?

A. Not that I recall.

Q. Was there anything said about the check-off system?

A. I believe there was some discussion of that sort.

883 Q. Do you recall Mr. Anselm saying that the company would not require any employe to join the union and pay dues to the union if he did not want to, or words to that effect?

A. He might of; I can't recall, however.

Q. Directing your attention to February 17th, 1937, Mr. Dreyer, did you participate in a meeting of the bargaining committee that was held in the Chemical Building?

A. I didn't.

Q. About 2:15?

A. I didn't.

Q. You did not?

A. No.

Q. You were not a member of the group that had called on Mr. Anselm, is that right?

A. On the 17th?

Q. Yes, sir.

A. No, I wasn't.

Q. Where were you working on that day?

A. In the cutting department.

Q. On what building?

A. Building 3.

Q. Did anything unusual happen that day in Building 3?

A. I don't understand your question.

Q. Did anything out of the usual conduct of the business occur in building 3?

884 Did you go on with production all day?

A. Until 2:30.

Q. What happened at 2:30?

Trial Examiner Dudley: Mr. Swiren, I might call your attention to the fact that there was no testimony on direct examination about anything that happened in February, 1937.

Mr. Swiren: I understand.

Trial Examined Dudley: I will let you go ahead, if you want to.

Mr. Swiren: I understand that all right.

Trial Examiner Dudley: It is considerably beyond the scope of the direct examination.

Mr. Swiren: I do not know whether this witness is coming back. The problem of getting witnesses for the respondent seems to be a very difficult one.

Trial Examiner Dudley: I shall let you go ahead, although you realize it is considerably beyond the scope of the direct examination.

Mr. Swiren: I do not know how much of this will be beyond the scope of the direct examination.

Mr. Walsh: I have not raised any objection.

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Swiren.) What happened that afternoon?

A. Well, the rest of the afternoon the plant shut down.

Q. Did the plant superintendent come in and say that
885 production should stop and the plant shut down? Is that right?

A. (No answer.)

Q. Did you shut down your machine?

A. I did.

Q. And the men around you shut down their machines?

A. They did.

Q. How did you happen to do that? Did anybody tell you to?

A. Well, in our department there is a blower, a big blower that takes the dust out. It makes quite a bit of noise. When that shuts down, naturally everything quiets down, and everybody wants to know what is wrong; everybody wonders what is wrong, when everything quiets down.

Q. Wait a minute.

A. Yes.

Q. The blower shut down that afternoon, is that right?

A. Yes.

Q. Who shut it down?

A. I don't know.

Q. You did not see it shut down?

A. No.

Q. Then, you shut down your machine following that, without talking to anybody?

A. I did.

Q. You did not know what was going on?

A. I did not.

886 Q. Then, what happened?

A. I don't recall. There was so much confusion, it is hard to remember things like that.

Q. Did you learn that afternoon that some of the men were planning to take over possession of buildings 3 and 5?

A. There was no discussion, as far as I know, about taking possession of any building.

Q. Did you hear what any of the men planned to do that afternoon with respect to buildings 3 and 5?

A. What was the question?

Mr. Swiren: Read the question.

(Question read.)

A. I didn't.

Q. (By Mr. Swiren.) Have you since found out?

A. Naturally; I was in the buildings during the strike.

Q. What did you find out that they planned to do?

A. I don't know what they planned to do. All I know is what did happen.

Q. The fact is, you and some others did take charge of buildings 3 and 5, and you held them from February 17th to February 26th, 1937, is that right?

A. I was in the buildings at that time.

Q. Was production proceeding in a normal fashion during that period?

A. No.

887 Q. Was there any production during that period?

A. Not that I know of.

Q. You remained in building 3?

A. Yes.

Q. During that entire period?

A. Yes.

Q. Day and night?

A. I did.

Q. You slept there, and ate there, is that right?

A. I did.

Q. How many other men were there?

A. Oh, approximately 50 men.

Q. They all stayed in there, and slept and ate in building 3?

A. Yes.

Q. Do you normally sleep in building 3?

A. No.

Q. Do you normally have all of your meals in building 3?

A. No.

Q. Were any of the women normally employed in building 3 there during the period from February 17th to February 26th?

A. I don't understand your question.
Q. There are women employed in building 3, are there not?
A. Yes.
Q. There are quite a number of them?
888 A. Between 35 and 40.
Q. Were any of those women in the building during that period from the 17th until the 26th of February?
A. No.
Q. There are some foremen normally in the building too, are there not?
A. Yes.
Q. Did they remain in the building during that period?
A. No.
Q. Were the doors barricaded during that period?
A. The doors were locked.
Q. From the inside?
A. Anybody who wanted to open them could open them.
Q. Anybody who wanted to could open them, is that right?
A. Yes.
Q. During that whole period?
A. That is right, as far as I know.
Q. Were you there on the evening of February 17th when I came to those buildings?
A. I don't recall you being there.
Q. You did not see me go into the building, did you?
A. I ain't never seen you until in this court.
Q. You did not see me inside of the building, inside of building 3, then?
A. No.
889 Q. Did you ever see the sheriff or his deputies, go into building 3?
A. I never seen them in the buildings, no.
Q. You know they tried to get in, do you not?
A. I do.
Q. But they did not succeed?
A. I don't know.
Q. They did not succeed during the time you were in that building, so far as you ever saw, did they?
A. I didn't see.
Q. Do I understand you to mean that you and the others in the building did not want to keep the company from taking possession of building 3 and keeping the sheriff from coming in?

Is that right?

A. I don't understand that question.

Q. Were you willing to have the company take over building 3 and send you home, during that period?

A. I can't answer that question. I don't know—

Q. Can you answer as to whether you and the other there wanted the sheriff to come in and send you home?

A. You are talking about what we wanted. We wanted to get together with the company and talk things over. We were in there on a protest. That is the only reason I was in there.

Q. Did you know the sheriff was trying to get you to go out?

890 A. I seen him out in the yard, yes.

Q. You knew what he was there for, did you not?

Mr. Walsh: I object, Mr. Examiner. I see no materiality to this line of inquiry.

Mr. Swiren: It certainly is material under the proceedings.

Trial Examiner Dudley: Mr. Swiren, how much longer do you want to go on?

Mr. Swiren: With this witness? I do not know. It depends on his answers.

Trial Examiner Dudley: I mean, how long do you wish to continue along this line?

Mr. Swiren: I want to exhaust this, and if the Examiner does not want me to do it in this hearing, I want to request my subpoenas again. I have been denied subpoenas on the theory of the Board that most of these witnesses will appear and be called by the Board. I am, therefore, proceeding on the assumption that the intent of the Board is that I avail myself of the presence of these witnesses when they are brought before the Examiner by the Board itself.

Mr. Walsh: I think, if the Examiner please, that counsel has by this witness and other witnesses adequately demonstrated what the facts were. Now, if it is his purpose to develop that, I think he has done it. He has accomplished his purpose.

891 Mr. Swiren: Mr. Walsh, will you stipulate as to the facts? Are you willing to stipulate as to the facts? We asked you about that before.

If Mr. Walsh is not willing to stipulate, we reserve the privilege of producing whatever proof we feel is necessary to establish our case. I do not think we ought to be guided by Mr. Walsh's judgment as to whether we have produced enough

or not enough. If Mr. Walsh feels that the evidence is clear, he ought to stipulate, and save everybody's time.

Trial Examiner Dudley: You have also introduced copies of the orders of the Circuit Court, Mr. Swiren.

Mr. Swiren: If there is a stipulation and agreement as to the facts, we do not have to proceed along that line.

Trial Examiner Dudley: You may proceed. I suggest you cut it as short as you can.

Mr. Swiren: What was the last question, Mr. Reporter?

(The question was read.)

Q. (By Mr. Swiren) Answer that, please.

A. Well, in my own mind, I imagine he was there to try and get us to go out.

Q. You did not come out until the morning of February 26th, is that right?

A. That is right.

Q. Did you hear about the discharge of the men on the evening of the 17th, a few hours after you sat down?

892 A. I don't recall that.

Q. When did you first hear that on the evening of February the 17th, the company discharged the men who were in buildings 3 and 5?

A. I don't know. It was sometime during the evening. I heard different men saying that they fired us, and that we were going to be fired, or something. I didn't pay much attention to it.

Q. You heard that during that evening of February 17th in the plant, is that right?

A. I heard something about "fired". I don't know whether it was "going to be", or "are", or what.

Q. Did you ask anyone?

A. No, I never inquired.

Q. Have you since inquired?

A. I never made any inquiries of nobody, no.

Q. Prior to the time you participated in taking over building 3, on February 17th, were you ever discharged?

A. No.

Q. You did not conceal the fact you were a member and an officer of Lodge 66, did you?

A. I didn't.

Q. You appeared at some of the conferences with the company officials, so they knew it, is that right?

A. Yes, and at those conferences, we told them who we were.

893 Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment, Mr. Dreyer.

Mr. Swiren, I think in your answer you set out that you offered this man employment, and he refused to take it. Do you want to bring that out?

I do not care whether you do or not.

Mr. Swiren: I can tell in just a minute. Yes, I think that ought to be completed while we have the witness on the stand —no, I think we will prove that in our own case.

The Examiner may ask about that, if he desires. I think we will prove that in our own case.

Mr. Walsh: What page and what paragraph is that, your Honor?

Trial Examiner Dudley: I do not have it by pages; it is paragraph 10, sub-section B.

Mr. Swiren: That is in answer to paragraph 7 of the complaint.

Trial Examiner Dudley: Sub-section B of the answer.

Q. (By Mr. Swiren) After the sit-down ended and you were evicted from building 3, were you asked to return to work at the Fansteel plant?

A. I was asked to sign a new application for a job. They said that they might be able to find something for me to do.

Q. Did you do that?

A. I didn't, because I considered myself an employee 894 of Fansteel.

Q. Did you say you did not want to come back to work at that time?

A. I didn't say that.

Q. You did not?

A. I didn't say I did not want to come back to work, no.

Q. Who did you talk to, by the way?

A. Mr. Henry.

Q. Did Mr. Henry say that you would have to fill out a new application before you could come back to work?

Is that right?

A. He asked me to fill out an application for a job. He said he might be able to find something for me to do.

Those are his exact words.

Q. Did he tell you could not come back unless you filled out an application?

A. He never told me in that way. Naturally, if he told

me to fill out an application for a job, that is the only way I could take it.

Q. You understood that prior to that time you had been discharged by the company, on the evening of the 17th of February, is that right?

A. That seemed to be the idea, yes, sir.

Q. You said you would not fill out an application?

A. I wouldn't fill out a new application, because I
895 figured I was an employee of Fansteel.

Q. And you told him that?

A. Yes.

Q. Did you tell him you wanted to go right back to work?

A. There was no discussion of that nature, no.

Q. You did not tell him you wanted to go back to work? You did not tell him anything about that, is that right?

A. I don't recall.

Q. Did you ever go back there again and present yourself to anyone for employment?

A. Not for employment, no.

Q. What did you go back there for?

A. I came back to get my pay.

Q. Did you ask for reinstatement at that time, from anyone?

A. No.

Q. Well, did you come in and try to go to work?

A. No.

Q. Did you?

A. No.

Q. As a matter of fact, each morning you reported at the headquarters of Lodge 66 for a considerable period, after you were out of building 3, is that right?

A. Not very long.

Q. Almost every morning?

A. It was not compulsory.

896 Q. Well, you came there frequently and signed a roster in the mornings, did you not?

A. I did.

Q. Then, did you go out on the picket line?

A. Sometimes.

Q. During that period you did not try to come in and resume your duties?

A. It would not have done me any good. I don't understand that question.

Q. Did you, or did you not, go in and present yourself and try to do your work during that time?

A. The only time I presented myself there was to get my personal belongings, and my pay.

Mr. Swiren: That is all.

Redirect Examination.

Q. (By Mr. Walsh) Mr. Dreyer, do you know whether a committee from the union went to see the management after the plant reopened and asked certain things from the management?

Mr. Swiren: A committee of what?

Mr. Walsh: A committee of the union.

The Witness: Yes, there was on two occasions, that I remember.

Q. (By Mr. Walsh) You were not on that committee, were you?

A. No.

Q. Do you know what the committee asked of the management?

897 Mr. Swiren: That is objected to. The fact is, they presented a letter. This man was not there, and does not know anything about it. There was an instrument in writing. What somebody told him ought not to be gone into here.

Let the men who attended the meeting appear, or produce copies of the instruments that were presented and considered.

Mr. Walsh: I will withdraw the question.

Mr. Swiren: I think you should.

Mr. Walsh: That will be all.

Trial Examiner Dudley: Mr. Dreyer, I would like to ask you one or two questions, about your method of pay in the early months of 1936.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) Were you paid on an hourly basis, or piece-work basis?

A. A piece-work basis.

Q. A piece-work basis?

A. Yes.

Q. How long were you paid on a piece-work basis?

A. On that job it has practically been piece-work since they have done that kind of work. When we first started we were on a day basis.

Q. Were you paid on a piece-work basis up until February 17th, 1937?

A. Yes.

898 Mr. Swiren: I think I can clear up what the Examiner has in mind. That department, and possibly one or two others had had piece work as a basis for compensation. That was abolished when the plant was restored to the company, and reopened, so that all employees would be on an hourly basis, other than those that were on a monthly basis.

There is no piece work.

Mr. Walsh: Then, the persons who previously had been on a piece work basis are now on an hourly pay basis, is that correct?

Mr. Swiren: I am referring to those who are working for the company now, and who worked for the company prior to February 17th, in these particular positions.

Mr. Dreyer is not on any basis.

Mr. Walsh: I am just trying to find out whether all of those jobs went on the hourly basis.

Mr. Swiren: The piece work jobs were translated into hourly jobs.

Mr. Walsh: I see.

Trial Examiner Dudley: Does anyone have any more questions to ask of Mr. Dreyer? Do you, Mr. Walsh?

Mr. Walsh: No.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: Do you wish to call Mr.

899 Aitchison now?

Mr. Walsh: Shall I start in with him now or do you want to adjourn for lunch now?

Mr. Swiren: Go right ahead.

Trial Examiner Dudley: Very well; proceed, Mr. Walsh.

Mr. Walsh: Take the stand, please, Mr. Aitchison.

ROBERT J. AITCHISON, recalled as a witness on behalf of the National Labor Relations Board, having been previously sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Walsh) Mr. Aitchison, did you produce certain correspondence in response to a subpoena, that is, correspondence and memoranda relating to your dealings with the National Metal Trades Association?

A. I have them in my bag right there.

Q. Would you get that, please?

A. Yes.

Q. Mr. Aitchison, on what date did you first contract the National Metal Trades Association?

A. Early in August.

Q. August, 1936?

A. Yes, early in August.

Q. At that time you filed an application for membership in that organization, did you not?

A. No. I filed it a little later.

900 Q. When did you file your application for membership?

A. August 17th, 1936.

Q. August 17th, 1936?

A. Yes.

Q. Was that application for membership ever passed upon by the National Metal Trades Executive Committee?

A. It was passed upon in April, 1937.

Q. Then, you were notified you had been elected to membership in that association in April?

A. April 14th, 1937.

Q. Is that when you got the notice?

A. Yes.

Q. Do you know whether the National Metal Trades Association Executive Committee actually passed upon it at a date e rlier than that or not?

A. I understand they passed on it on the 31st of March, 1937.

Q. Then you are not sure just when it was that they did pass upon it, is that right?

A. They say in their letter that they passed on it on March 31st, 1937.

Q. If their minutes indicated they passed on it at another date, you would not know that, would you?

A. I have not seen their minutes, no.

Q. I believe you obtained from the National Metal Trades Association a man by the name of Johnstone to work in
901 your plant.

What date did he go to work for you?

A. August 18th.

Q. How long did he continue to work for you?

A. He was discharged at noon, December 1, 1936.

Q. What was the reason for his discharge?

A. I understood he had some personal troubles at home. It interfered with his duties in the tool room, and the foreman of the tool room recommended that he be let out.

Q. The foreman recommended that he be discharged?

A. Right.

Q. What were his duties in the tool room?

A. He worked on different work which the foreman assigned to him.

Q. What was his trade?

A. Toolmaker, as I understand it.

Q. Do you know whether he had had any experience relative to plant production?

A. Yes.

Q. Was he represented to you to be an expert in the field of plant production problems?

A. Yes.

Q. Was he represented to you to be an expert in the efficiency of plant supervision?

902 A. Yes.

Q. Was he represented to you to be an expert in the efficiency of tool and machine equipment?

A. Yes.

Q. Was he represented to you to be an expert in the matter of morale of employes?

A. Well, there was no expert representation on that.

Q. Was he represented to you to be an expert in shop working conditions?

A. Well, anyone who has worked in the shop for many years would understand that.

Q. Was he represented to you to be an expert in all other factors reflected in the prevailing rate of production?

A. No.

Q. He was not?

A. No.

Q. I notice by your answer that you allege that for these several purposes I have just mentioned, this man was employed to observe these matters and report to you upon them?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, did this man report to you from time to time?

A. He did.

Q. I believe the subpoenae called on you for the furnishing of such reports?

903 A. I do not have them.

Q. What became of those reports?

A. I read the reports, and destroyed them as read.

Q. As soon as you read those reports, you destroyed them?

A. That is right.

Q. They would not be in the possession of any other official of the company?

A. No, sir.

Q. How were those reports received, Mr. Aitchison?

A. They were mailed to me at my home.

Q. They were mailed to you at your home?

A. Yes.

Q. From whom did they come? From what source did they come?

A. I believe at the beginning, some of them were transmitted from the office of the National Metal Trades Association. Later on, they came to me direct.

Q. They came direct from Johnstone to you?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, in this class of things that Johnstone was to observe, namely, all other factors reflected in the prevailing rate of production, what type of activity was covered by that particular classification?

904 A. We knew there was some unrest in the plant. We had an unsatisfactory condition with reference to foremen and supervision.

There was a natural reluctance on the part of the workmen to talk about their foremen, and about conditions, which they felt might kick back on them. We had lost the services of our chief engineer, and a number of promotions had been

made, largely because we took the next man in line to fill the job, although he had no experience in that job.

I suspected that in numerous instances the general foreman supervision of production was not filled by a man who really was a man qualified for the job, but rather by a man who had been with us for a great many years.

Q. Now, was there—

A. Therefore, he was instructed when he came in, to withhold nothing in his reports, and no criticisms of anybody as the reports would come to me only.

Q. Now, would the fact that your men were organizing a union be one of the things he would report on?

A. He reported that union activities on the premises was one factor interfering with production.

Q. Did he also report he had become a member of the union himself?

A. I think he did.

905 Q. Did he report to you the names of other men that were members of the union?

A. No, sir.

Q. Did he report to you the names of the men active in the organization of this union?

A. He reported, as to the union, only the names of the officers, and the speakers that they had at such meetings as he attended.

Q. Every time he would attend a union meeting, would he report to you on it?

A. I think there were not over four reports that mentioned union meetings.

Q. Four of the reports that he filed did mention them, however, is that right?

A. He did not at any time report the number that was at the union meetings, nor give any statistics to that extent.

Q. Now, when you filed your application for membership in the National Metal Trades Association, did you know the objects and purposes of that organization?

A. Well, I knew that they ran a very comprehensive service in foreman training, apprenticeship, general information and statistics, and an employment service.

I knew that they stood very high in the estimation of other manufacturers.

Q. You also knew that it was one of their principles

906 that they would operate their plants on the open shop plan, is that right?

Mr. Swiren: We object to that, if the Examiner please.

Mr. Walsh: I am inquiring of this witness as to what he knew at that time.

Mr. Swiren: I understand the question. I would like to be heard on it. I think it goes to a large line of testimony.

I do not think it makes a particle of difference whether this company belonged to any organizations or what the policies of those organizations may have been.

The only question is, what this company did. Unless they can show the company did something which they now complain of, or unless they can show that the association with which this company joined was engaged in certain activities on behalf of the company that they now complain of, I cannot see that there is any pertinency to it.

Trial Examiner Dudley: Objection overruled. The testimony may be admitted for such weight as it may have.

The Witness: Repeat the question, please.

Mr. Walsh: Read the question, please.

(The question was read.)

A. I knew that their idea about a closed shop and mine are exactly the same.

Q. (By Mr. Walsh) Your ideas about a closed shop have not changed since the time you joined that association, 907 have they?

A. No, sir.

Q. Are you familiar with—

A. Nor before.

Q. (Continuing) The declaration of principles of that organization, Mr. Aitchison?

A. I would not say I am familiar with it, no.

Q. If I should read to you—I will read the second declaration of principle of the National Metal Trades Association, entitled "Strikes and Lockouts":

"This association disapproves of strikes and lockouts in the settlement of labor disputes. This association will not countenance a lockout unless all reasonable means of adjustment have failed. Neither will the members of this association deal with striking employes as a body."

Does that pretty well express your views on that question?

Mr. Swiren: Just a minute.

The Witness: I did not know of that one.

Q. (By Mr. Walsh) Does that pretty well express your views on this question?

Mr. Swiren: That is objected to.

The Witness: No, it does not.

Mr. Swiren: I do not see that it makes any difference what views Mr. Aitchison entertains.

908 Trial Examiner Dudley: The witness already answered. The answer may stand.

Mr. Walsh: The answer was "No".

Mr. Swiren: Will the Examiner note an objection to the entire line of questioning with relation to the National Metal Trades Association, its policies, and its point of view with respect to labor difficulties?

Trial Examiner Dudley: The objection may be noted in the record.

Mr. Walsh: Is the objection overruled?

Trial Examiner Dudley: Yes; the objection is overruled.

Q. (By Mr. Walsh) Now, Mr. Aitchison, was it necessary for you to pay some compensation to the National Metal Trades Association for the use of Johnstone and his reporting service?

A. It was not, to the association; it was to Johnstone.

Q. Did you pay him anything over and above the normal weekly wage he received?

A. Yes.

Q. How much did you pay him?

A. I think it was an adjustment between whatever he earned in the plant and $200 a month.

Q. Do you recall how much he earned at the plant?

A. I have the figures here, if that is of interest.

909 Q. You say you have those figures?

A. Yes.

Mr. Swiren: Just a moment.

Mr. Walsh announced yesterday the principle that instruments need not be produced except on subpoena, even if they were in the possession of the witness.

We will expect Mr. Walsh to adhere to that same principle for both sides. He does not have difficulty in getting subpoenas anyhow.

Mr. Walsh: Well, as a matter of fact, Mr. Swiren, I have called for that in the subpoena.

Mr. Swiren: Did you?

Mr. Walsh: Yes. Therefore, I am entitled to look.

Mr. Swiren: If you asked for it, you are permitted to have it.

Trial Examiner Dudley: Let us proceed, gentlemen.

Q. (By Mr. Walsh) Mr. Aitchison, will you refer to that

record and state just what payments were made to Johnstone over and above the amount he earned as his weekly wage during the period of time that he was employed by the Fansteel Metallurgical Corporation?

A. He was employed on the 18th of August, and discharged at noon on the 1st of December. During that entire period he was paid $347.93, for his work in the shop.

Q. Yes.

910 A. The difference between that and $200 a month was what was paid to him.

Q. What was that difference?

A. I do not know. I will have to figure it. It was about $310; I cannot give you the exact figure. It is about that.

Q. So, during that period from the 17th day of August until the 1st of December he was paid about $350, or $360—I mean, $650, is that right?

A. That is about right.

Q. $650 or $660.

A. Yes.

Q. Now, was there any reason why you should not have received these reports from Johnstone at the office in the regular course of company business?

A. Yes. He was serving me in a confidential capacity, and anything put through the regular office, somebody would know about.

Q. The reports were of such a nature that you felt they should not be part of the company records, is that right?

A. That is right.

Q. So you had them destroyed?

A. Criticisms of his own boss and others do not make very good additions to the regular file.

911 Q. Do you know at the time you joined the National Metal Trades Association that they furnished strike insurance of a kind, one kind or another?

Mr. Swiren: That is objected to.

Mr. Walsh: It is a question of whether he knows.

Mr. Swiren: What is the difference?

Trial Examiner Dudley: Objection overruled.

A. I did not know what they furnished.

Q. (By Mr. Walsh) Did you later—

Trial Examiner Dudley: What was the answer?

The Witness: I did not know what they furnished.

Q. (By Mr. Walsh) Did you later make any inquiry?

A. I was told when we went in, that we would not have

any of the service that they might render until we were elected a full-fledged member. I knew that in advance.

Q. So, what service they could render you, would not be available until you became a member, is that right?

A. That is right.

Q. Did you request any other service from them than the service of Johnstone between the first of August, or the middle of August last year, down to the present time?

A. None, except the opportunity to talk with their attorneys, and to talk with their administrative officers.

Q. You talked to them concerning your labor difficulty, I take it?

912 A. I talked to them and tried to get an expression as to what the sentiment was among the membership, and other business men, not only as to labor relations, but as to apprenticeship particularly.

Q. Now, at the time your plant was reopened, did you receive any employees that were sent to you by the Metal Trades Association, or did they send you any?

A. Well, at the time we reopened the plant, I think we sought employees from a number of employment agencies.

Q. You knew that the National Metal Trades Association ran an employment agency, did you not?

A. Yes, sir.

Q. Did you ask them to send you some employees?

A. Well, there are some crafts in which there are mighty few skilled men in Waukegan. I think we secured through their employment service two men.

Q. Two men?

A. Two men.

Q. What crafts were those men in?

A. Expert screw machine operators.

Q. Automatic screw machine operators?

A. Expert screw machine operators.

Mr. Swiren: I move to strike out the testimony with respect to the employment of these two men. I do not see that it has any pertinency to these issues.

913 Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh) Those men were placed in jobs that had been occupied by the men who had gone out on strike, and had engaged in the strike?

Mr. Swiren: I do not know that there has been any testimony about who went out on strike. The only testimony we have had has been as to the men seizing the plant. I object to the question.

Trial Examiner Dudley: Objection overruled.

Mr. Walsh: I think Mr. Aitchison understands what I mean.

The Witness: As we recruited a new force, we took back as many people as would come back and make application. There were, naturally, some vacancies.

Mr. Walsh: Yes.

The Witness: One of the vacancies was on the screw machine—or, two of the vacancies were on the screw machines, and that is where these men were put.

Q. (By Mr. Walsh) I do not suppose you could tell me offhand who had occupied those jobs before?

A. I think Ed Ruck was one. I do not know who the other fellow was.

Q. Did you receive any assistance from the National Metal Trades Association in the conduct of the strike—

A. No, sir.

914 Q. —that you had?

A. No, sir.

Q. Did you know at the time you joined that association that you could make no settlement with your striking workmen without the consent of the National Metal Trades Association in writing?

Mr. Swiren: That is objected to. The testimony shows the company did not become a member until April, which was long after the sit-down had ended, and the buildings were restored to the company, and production resumed.

The Witness: We never had any discussion of any kind—

Mr. Swiren: Just a moment. I ask for a ruling.

Trial Examiner Dudley: The testimony indicates that the application for membership was made some time previously. The objection is therefore overruled.

The Witness: What was the question?

Trial Examiner Dudley: Read the question.

(The question was read.)

Trial Examiner Dudley: What was the answer?

The Witness: No.

Mr. Swiren: What was the answer?

The Witness: The answer is "No". As a matter of fact,—

Mr. Walsh: Now, at the time—

Mr. Swiren: Just a moment. Let us hear the rest of the answer.

915 Mr. Walsh: Excuse me.

The Witness: I say, as a matter of fact, we could make any settlement we chose.

Q. (By Mr.Walsh) Did you know at the time you were elected to membership that you could make no settlement with your workmen without the consent of the National Metal Trades Association in writing?

Mr. Swiren: I object to the form of the question. I think he ought to ask him whether there was any such understanding or agreement before assuming that there is.

Trial Examiner Dudley: The question relates to his knowledge of the rules of the Association.

Mr. Swiren: Well, I do not question the rules, but there has to be a rule before there can be any knowledge of it.

Trial Examiner Dudley: What is the question?

(The question was read.)

Mr. Swiren: I think the rule ought to be bared, if there is a rule, and then you can proceed to the question of knowledge, instead of taking Mr. Walsh's interpretation of what might be a rule.

Trial Examiner Dudley: The witness may answer as to his knowledge of the existence or non-existence of any such rule.

The Witness: No.

Q. (By Mr. Walsh) Mr. Aitchison, you were familiar 916 with the general purpose of this Association, which was, I take it, to operate their various businesses on the open-shop plan?

You were familiar with that?

A. I know that principle agreed 100 per cent with my idea of it.

Q. All right. Now, I will read to you Article 13, Section 6, of the constitution of that body, as follows:

"No member shall adjust with its employees any strike or difficulty, the settlement of which involves a violation of this constitution or the principles of this association as set out in the declaration of principles. The questions arising as to the interpretation thereof shall be referred to the administrative council."

I will ask you whether or not you agree with that?

A. I have never read the constitution, or their declaration.

Q. Did you know that provision was in their constitution?

A. No, sir.

Q. Neither at the time you joined the association, nor at the time you applied for membership?

A. That is right.

Q. I will read Article 13, Section 7, and ask you if you knew this—

Mr. Swiren: Just a moment. We object to any further references to the constitution, in view of the testimony of
917 the witness that he has never read the constitution of the association.

Mr. Walsh: He may have heard about it.

Trial Examiner Dudley: The witness has testified he joined the association.

Mr. Swiren: That is right.

Mr. Walsh: It is his club.

Trial Examiner Dudley: The objection is therefore overruled.

Mr. Walsh: I will read Article 13, Section 7 of the constitution entitled "Penalty for settling without the approval of the administrative council."

"If, without the consent of the administrative council a member shall settle a difference or strike, the defense of which has been assumed by the association, such member shall repay to the association all of the moneys which the association may have expended on account of having assumed the defense of such difference or strike, and shall also be liable to suspension or expulsion."

Mr. Swiren: We object, in addition to the grounds already stated, on the further ground that there is no evidence as to what the constitution actually is, other than Mr. Walsh's statement.

Further, the rule referred to applies only to cases
918 where the defense has been assumed by the association.

The testimony shows there was no such assumption of any defense on behalf of this company by that association, so it could not be applicable.

Trial Examiner Dudley: Objection overruled.

The Witness: In the first place, I would say—

Mr. Keele: Just a moment, please, Mr. Aitchison.

The Witness: All right.

Mr. Keele: I would like to state a further ground of objection. I think we ought to have some proof as to what the rules are. For all we know, Mr. Adelman had this printed up in Waukegan. We have no way of knowing whether he is reading the constitution or not.

Unless he can justify the authenticity of it, I do not think he ought to be allowed to cross examine the witness on it. If he wants to take the stand, and testify those are the rules, or

that is the constitution, and be subjected to cross examination on it, all right.

We have no way of knowing whether that is the constitution or not. You are permitting him to cross examine the witness, and use a document, the authenticity of which has not been shown, as though it were a fact.

I do not think your Honor wants to go forward on that basis.

Mr. Walsh: I will state, if your Honor please, that I
919 am reading from the report of the hearings before a subcommittee of the Committee of Educational Labor of the United States Senate, pursuant to Senate Resolution No. 266, 74th Congress, part 3, Exhibit 389, being the National Metal Trade Association Constitution, By-Laws and Declaration of Principles.

The portion I have just read will be found on page 1007 of this document.

Mr. Keele: There is still nothing to guarantee that is a correct statement.

Mr. Walsh: All I know is that this is what the witnesses for the National Metal Trades Association filed in evidence in that hearing, as being their constitution and by-laws.

The publication is printed by the United States Government Printing Office in Washington.

Trial Examiner Dudley: Mr. Keele, the witness is testifying only to his knowledge or lack of knowledge of this constitutional provision and other provisions. He may certainly testify as to his knowledge, even though these provisions should be quoted inaccurately.

The Board will bear in your mind your objections in considering the questions, insofar as they might be relevant to any proof of the actual existence of such rules.

The testimony is merely Mr. Aitchison's knowledge of
920 such rules. If additional evidence is introduced as to the actual contents of the constitution or other rules of the association, the Board can consider this in the light of such evidence, or in the light of the lack of such evidence.

Mr. Keele: I think then he ought to be asked whether or not he knows whether such a rule exists, instead of having counsel state that such-and-such a rule, or such-and-such a provision was in the constitution, because counsel does not know.

He ought to ask him whether he knows if such and such a provision appears there.

Trial Examiner Dudley: The witness is merely replying as to his knowledge of whether or not there was such a provision.

Mr. Keele: I do not think the Board ought to be reading the testimony of its own employee, as though it were testimony, and that is exactly what is happening here.

Mr. Walsh is saying "Did you know that such-and-such a provision was in the constitution?"

In other words, he is making a statement each time that it does appear in the constitution.

Trial Examiner Dudley: That is a statement only of counsel, and not the witness.

Mr. Keele: Counsel is bound by the Board.

Trial Examiner Dudley: The Board will remember
921 that the statements of counsel are not the statements of the witness.

Mr. Keele: We hope it will.

Mr. Walsh: I might say, for your information, Mr. Keele, that the Board does not always agree with everything I say.

Mr. Swiren: Well, that is hopeful.

Mr. Keele: I assume my objection is overruled.

Trial Examiner Dudley: Yes, your objection is overruled.

The Witness: Read the question. Read the question without repeating what he read.

Q. (By Mr. Walsh) The question was, did you know such a provision existed at the time you joined?

A. I did not. I have no arrangement with the National Association to settle any troubles of ours. We will settle our own problems. If that means we are suspended by them, that is all right with me.

Q. You will just be tough?

A. We settle our own affairs at North Chicago. They are not settling them.

Q. After you were elected to membership in this association, did you enter into any contracts of any kind with the association?

A. Not other than the application.

Q. I believe I called for correspondence between the Fansteel Company and the association. Did you have any
922 correspondence with them?

A. Yes.

Q. Do you have it present?

A. Yes. I have these too, if you want them. (Handing documents to counsel.)

Q. These documents are services they issued from time to time?

A. That is right. There are mimeographed sheets, as well as printed sheets. Is this part of the correspondence too? (Handing documents to counsel.)

Mr. Walsh: Mr. Examiner, may I suggest an adjournment at this time? I would like to look these over, and see whether there is anything in here that I want to put in evidence. I will give them back to you after lunch. I do not think there is anything in here I want.

Trial Examiner Dudley: Is there any objection, Mr. Swiren, to an adjournment for lunch?

Mr. Swiren: No.

Trial Examiner Dudley: What time would you like to reconvene?

Mr. Walsh: Two o'clock is all right.

Trial Examiner Dudley: We will reconvene at 2 o'clock this afternoon, in this room.

(Whereupon, at 12:30 o'clock P. M. a recess was taken until 2:00 o'clock P. M.)

923 After Recess.

(The hearing was resumed at 2 o'clock P. M. pursuant to the taking of recess.)

Appearances:

As heretofore noted, and the following additional appearance:

Lester Collins, Waukegan, Illinois, appearing on behalf of Local 66, of the Amalgamated Association of Iron, Steel & Tin Workers of North America.

Trial Examiner Dudley: The hearing will reconvene.

ROBERT J. AITCHISON, the witness on the stand at the time of taking of recess, resumed the stand and further testified as follows:

Direct Examination (Continued).

Q. (By Mr. Walsh) Mr. Aitchison, referring to your letter to the National Metal Trades Association, dated April 20th, 1937, I will read it as follows:

"National Metal Trades Association,
"122 South Michigan Avenue,
"Chicago, Illinois.

"Gentlemen:"

Mr. Swiren: Just a minute. Why do you not just offer the letter, so we can object to it, before you read it into the record?

Mr. Walsh: All right. Will you furnish a copy of this 924 letter?

Mr. Swiren: Certainly. We will furnish you with copies, if the Examiner decides to admit it in evidence.

Mr. Walsh: Will you mark this Board's Exhibit No. 21 for identification please, Mr. Reporter.

(The document referred to was marked "Board's Exhibit No. 21", for identification.)

Trial Examiner Dudley: What is the date of that letter?

Mr. Walsh: April 20th, 1937.

Mr. Swiren: Are you offering it?

Mr. Walsh: Yes. I offer it in evidence.

Mr. Swiren: We object on the ground it has no materiality to any of the issues here.

Mr. Walsh: Would the Examiner like to see it?

Trial Examiner Dudley: Yes.

Mr. Swiren: What Exhibit number is that, Mr. Walsh?

Mr. Walsh: That is Board's Exhibit 21.

The Witness: May I see it now?

Mr. Walsh: Yes. (Handing document to the witness.)

Trial Examiner Dudley: It may be admitted in evidence, for such testimony as it may give.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT 21", Witness Aitchison.)

Trial Examiner Dudley: You may proceed.

925 Q. (By Mr. Walsh) Referring to that letter, I notice you instructed the association to discontinue the mailing of literature and other things that you would be receiving, to your home, and instructed them to mail them to the office, is that right?

A. That is right.

Q. You say in the letter: "I think that the occasion for addressing communications to me at my home"—giving the address—"has passed."

What occasion was it that caused you to have these things addressed to your home, rather than to your office?

A. Well, the original reports that came from Johnstone

were mailed to me at my home. Later on I received a lot of regular printed bulletins from the association, and I had to carry them from home to the plant, so I saw no reason for carrying that way.

Q. This of course was after the date Johnstone ceased to be employed, was it not?

A. It was a long time after the date he ceased to be employed.

Mr. Walsh: Mr. Swiren, will you furnish me with a copy of that please?

Mr. Swiren: Yes.

Mr. Walsh: Will you mark this Board's Exhibit No. 22 for identification, Mr. Reporter.

(The document referred to was marked "Board's Ex-
926 hibit No. 22," for identification.)

Mr. Swiren: Do you want a copy of both of these?

Mr. Walsh: No. I just want a copy of that first one.

Mr. Swiren: Are you offering this one now?

Mr. Walsh: I will offer that in evidence, yes.

Mr. Swiren: What is the date of that?

Trial Examiner Dudley: April 22, 1937.

Mr. Walsh: If the Examiner please, I now offer this in evidence.

Mr. Swiren: We object, on the ground it has no materiality to any issue in this case.

Trial Examiner Dudley: Objection overruled. It may be received in evidence.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 22", Witness Aitchison.)

Q. (By Mr. Walsh) Referring to Board's Exhibit No. 22, Mr. Aitchison, I will read from the last paragraph of your letters, as follows:

"I want to take this opportunity of also expressing to you our sincere appreciation of the many helps and assistance accorded us through the executive office of your association, and through the head office of your Chicago branch."

What are those many helps that the association ren-
927 dered to you, to which you have reference?

A. Well, I have explained before that we were short of experienced help, short of apprentice training methods and short of understanding and knowledge of what many other plants are doing to build up a good effective organization.

We were extended the privilege of permitting our superintendants or foremen to attend certain meetings in which they

discussed matters of training help, training foremen, and training apprentices.

We were afforded an opportunity of getting, through the National Metal Trades Association an expression of the feeling of its members as to whether or not they were favorable to granting vacations with pay to hourly employees, which has been quite a disputed subject.

They gave me an opportunity to talk to one of their attorneys as to their construction of certain features of industrial relations that were going on in different parts of the country. I had a rather free opportunity, should I choose to call on them, to obtain expressions of what other people in the country thought as to different problems.

I thought, in spite of the fact that we were a member paying dues, and contributing to the support of the organization, that was extending a very fine courtesy.

Mr. Walsh: Will you mark this Board's Exhibit No. 23 for identification, please, Mr. Reporter.

928 (The document referred to was marked "Board's Exhibit No. 23", for identification.)

Mr. Walsh: I would like to offer at this time in evidence the application for membership in the National Metal Trades Association of the Fansteel Metallurgical Corporation.

Mr. Swiren: That is objected to. It has no materiality to any of the issues in this case. The evidence further shows the application for membership was not accepted or acted upon until long after any of the dates listed in the complaint.

I do not see how membership in the association afterwards, or the application in advance can have any materiality or any bearing on the issues in this case.

Trial Examiner Dudley: Mr. Swiren, do you want to have the application verified? Is that the original that is being submitted?

Mr. Walsh: There are matters contained in this application concerning which I would like to question the witness.

Trial Examiner Dudley: You will have the witness testify that this is the application?

Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: You will have the witness testify that this is the application?

Mr. Walsh: Yes.

929 Trial Examiner Dudley: Objection overruled.

(The document referred to was received in evidence

and marked "BOARD'S EXHIBIT NO. 23", Witness Aitchison.)

Trial Examiner Dudley: You may proceed, Mr. Walsh.

Q. (By Mr. Walsh) I hand you what has been marked Board's Exhibit No. 23, which is a document you furnished me, purporting to be your application for membership in the National Metal Trades Association.

Are you informed as to whether that is a correct copy of your application?

A. That is the file copy. I imagine it is correct.

Q. You assume it is correct?

A. Yes.

Q. Would you refer to the back page of that application, and read the note there for the record please.

Mr. Swiren: Just a moment please. You have offered the application. I do not see any purpose in asking any questions about th note. Whatever is on there is there.

Mr. Walsh: All right.

Trial Examiner Dudley: Is the question withdrawn?

Mr. Walsh: I beg your pardon?

Trial Examiner Dudley: Is the question withdrawn?

Mr. Walsh: The question will be withdrawn. I will read the note. Referring to the back page of the application you will find a note as follows:

930 "In filling out this application, it should be remembered that foundry employees, truck drivers, yard men, engineers, firemen, watchmen, crane men, elevator operators, stock keepers, packing room employees, janitors, clerks, draftsmen, superintendents, general foremen, foremen, and all non-productive labor should not be included; neither should operatives employed outside of the premises of the plant be included in this report."

Now, in accordance with that instruction, you reported to the association that you had: "All-around machinists, 9. Lathe hands, 1. Shaper hands, 1. Drill press hands, 1. Screw machine hands, 2. Die makers, 1. Apprentices, 4. Heading machine operators, 2. Hardeners and annealers, 13. Electric furnace chemical process, 6",—making a total of 44.

Q. (By Mr. Walsh) That is what you reported, did you not?

A. There are some more.

A. Well, for this particular column, there are 44, are there not?

A. I did not make out the figures.

Q. I see.

A. Apparently that was what was reported. I assume that is right.

Q. Now, under the heading of "General Manufacturing", you show: "Power press hands, 2; miscellaneous machine
931 operators, 17; metal parts assemblers, 2 men and 11 women; braziers, 2; polishers, diamond dyes, 2 men and 1 woman; platers, 2; inspectors, 1 man and 18 women; miscellaneous production labor, 1; miscellaneous production chemical process, 7".

Then in the rolling and wire mill department, you show: "Metal rollers, 4; bull block men, 3; wire drawers, 4 men and 1 woman; swedgers, 6; annealers, 4."

In the maintenance department you show: "Carpenters, 3; millwrights, 2; pipe fitters, 2; electrical workers, 1; electric furnace repairers, 2, and helper 1."

That makes a total of 68 men and 31 women in those classifications. That was as of August 17, 1936.

Now, does that reflect the number of production workers that you had at that time?

A. Well, the way this organization assessed its dues is this: It is based on certain classifications of work in the plant, and that is our interpretation of the classifications of work on which the payment of dues would be based, if, as and when we were admitted as members.

Q. I see.

A. It does not include the people in the plant that are really engaged in productive work, but who do not come under these classifications.

Q. I believe those figures total 143. Have you checked that?

932 A. No.

Mr. Walsh: I would like to offer a copy of this in lieu of this document. This will be withdrawn and a copy substituted, so they may have it for their records.

Mr. Swiren: It was offered, as I understood it.

Trial Examiner Dudley: It was offered in evidence, and admitted, yes.

Mr. Walsh: Yes.

Trial Examiner Dudley: Permission is granted to withdraw it and substitute a copy.

Mr. Walsh: I am going to offer this in evidence. (Handing document to Mr. Swiren.)

Mr. Swiren: You had better have it identified.

Mr. Walsh: Will you mark this Board's Exhibit 24 for identification, please, Mr. Reporter.

(The document referred to was marked "Board's Exhibit No. 24", for identification.)

Q. (By Mr. Walsh) I hand you a paper which has been marked Board's Exhibit No. 24. I will ask you if that is the letter you received from the National Metal Trades Association?

A. This is the letter I received advising that we had been elected to membership.

Q. I see. The attached excerpts from the constitution and by-laws was on that letter, was it not?

A. Yes. This was attached when it came.

933 Q. It was.

A. Yes.

Mr. Walsh: I would like to offer this in evidence, if the Examiner please.

Mr. Swiren: I would like to ask one question with reference to this.

Q. (By Mr. Swiren) When was that received, Mr. Aitchison?

A. It was received the same day I wrote the letter to Mr. Strawbridge. I think it is April 14th.

Mr. Swiren: We object. It is not any materiality. In addition, it was received long after any of the dates specified in the complaint, of the matters therein referred to.

The Witness: He offered one letter in evidence, the one in which we acknowledged the receipt of this, the yellow carbon.

Mr. Walsh: That was April 20th.

The Witness: That is right, then. At least, that is when I wrote it—or rather, that is when I got it.

Q. (By Mr. Walsh) That is your best recollection of when you received it, is that right?

A. It says there that I was out of the city, does it not?

Mr. Walsh: That must have been April 22nd.

Trial Examiner Dudley: You wrote them a letter on the 22nd?

934 The Witness: That is when I got this. I had been away for about ten days and when I came back there was an accumulation on the desk.

Trial Examiner Dudley: Do you still maintain your objection, Mr. Swiren?

Mr. Swiren: Yes.

Trial Examiner Dudley: The objection is overruled.

(The document referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 24", Witness Atchison.)

Mr. Walsh: I do not care to ask any questions about this. Do you want to submit a copy?

Mr. Swiren: Yes.

Mr. Walsh: I will ask leave to withdraw it, and furnish a copy of the letter.

Trial Examiner Dudley: Leave is granted.

Q. (By Mr. Walsh) Mr. Aitchison, how long has the plant of the Fansteel Company been standing out there—withdraw that.

How old are the buildings of the Fansteel plant? I suppose they vary in age, do they not?

A. Do you care if I look at something here?

Q. No. Go ahead.

A. I cannot testify exactly how old they are.

Q. The plant has been there about 20 years, has it not, roughly?

935 A. What we classify as Building 5, the building itself is some 60 years old.

Q. I see.

A. It was taken by the Fansteel Electrical Laboratory in 1908. Business was started in 1907. They rented the place in 1908. They occupied another building in 1907.

Q. Since 1907 you have been in that same general location or the same location?

A. In 1907 they were just south of the power plant, which is two blocks north of the present plant. In 1908 they moved down to Building 5, and other buildings since then have been added on from time to time.

Q. So you have a total now of 15 buildings, 14 or 15 buildings?

A. 15 buildings.

Q. 15 buildings.

A. Yes, as we classify them.

Q. Are those 15 separate structures?

A. Yes, except building 6, which is a lean-to on building 5. It is a separate building, though, I assume.

Q. When did you build the fence around the property?

Mr. Swiren: That is objected to. It does not make any difference when we built our buildings or fences. I do not know

of anything in the Wagner Act that prohibits the building of a fence.

936 Trial Examiner Dudley: Objection overruled. I will admit the testimony subject to the introduction of testimony later to connect it up, in some way.

Mr. Swiren: The proper procedure would be to connect it up first.

The Witness: Well, the first discussion about the fence commenced in 1925, but the fence was actually constructed in early September, I think, 1936.

Q. (By Mr. Walsh) Then from 1925 until 1936 there was no occasion to have a fence, was there?

Mr. Swiren: That is objected to.

The Witness: My dear fellow, we had no money.

Mr. Swiren: Just a moment. I object to the question, and ask that the answer go out.

Trial Examiner Dudley: Objection overruled. The answer may stand.

The Witness: I went to the company in 1932, to see whether to wash them up in bankruptcy, or keep them afloat.

Q. (By Mr. Walsh) Did the reports Johnstone was making to you concerning the union activities going on in your plant have anything to do with the building of the fence?

A. Well, he said at one time that there were union organizers on the property practically every minute of the business day, and other people interfering with our operations. We have 15 buildings, and men have to go from building

937 to building in connection with their work. He said there were other trespassers and outsiders around the buildings practically all day, button-holing people in the yard. That had something to do with our decision to keep people out that did not belong in there.

Mr. Walsh: That will be all.

Mr. Swiren: We object to all the testimony with respect to the fence, and ask that it be stricken.

Trial Examiner Dudley: The motion is denied.

Mr. Swiren: May I ask where the connection has been made?

Trial Examiner Dudley: There is a connection in time between the building of the fence and the commencement of the labor controversy. There is also a connection with the reports of Mr. Johnstone who at least submitted four reports as to labor union meetings according to the testimony of the witness this morning.

Proceed.

Cross-Examination.

Q. (By Mr. Swiren) Mr. Atchison, will you refer to Board's Exhibit 22, and tell us whether the excellent principle you referred to is mentioned in your letter, or the letter to which it is a reply?

A. Well, I think one of the principles I had in mind when I wrote the letter was that we have had no labor troubles
938 or difficulties with anybody since 1907. We have never interfered or attempted to influence our people in any way.

I think that it is a good American principle to let the workmen do as they please, and not be influenced one way or the other. We stand on that principle. We stood on it then and we stand on it now.

Q. Referring to the letter from Mr. Strawbridge, president of the association, to you on April 7, 1937, I will ask you whether there was anything in that letter to which your letter of April 22nd, Board's Exhibit No. 22, was a reply, so far as the association's principles were concerned?

A. Well, that letter states that the cardinal principle is to secure and preserve equitable conditions in the workshop of our members, for the protection for both the employer and the employee.

I think that means a square deal for everybody. We stand on that. We have always followed it. We still stand on it.

Q. You heard the testimony about a committee of the union that called on the management in July 1936?

A. Yes.

Q. At that time did you learn who the officers of Lodge 66 were?

A. Yes. They came in and told us.

Q. In addition to the information as to the officers,
939 did you learn anything—strike that out.

In addition to that information that the men gave you themselves, did you get any information respecting Lodge 66 leadership in the three or four reports you mentioned of Mr. Johnstone?

A. Well, at that time the men told us who were the leaders in the lodge movement. Subsequent reports of Johnstone merely mentioned the same names. There was no change to my understanding.

Q. Were any of the men you knew to be leaders or officers of Lodge 66 either by their own statements alone, or by their

own statements and the corroboration of Johnstone, discharged at any time prior to the evening of February 17, 1937?

A. No, sir.

Q. Were any of those men prior to that time threatened with discharge for being members of Lodge 66 or engaging in any union activities, or undertaking or purporting to undertake mutual aid and collective bargaining?

A. No, sir.

Q. Were they disciplined by reason of that in any respect or to any extent?

A. They were not.

Mr. Walsh: I object, if the Examiner please, unless counsel clarifies the word "discipline"; let him tell what was done.

940 Mr. Swiren: We understand the word. We can go further if Mr. Walsh prefers.

Trial Examiner Dudley: You may ask the witness what he means by "discipline", so there will not be any misunderstanding about the word.

Q. (By Mr. Swiren) Was any action taken with respect to these men by the company predicated upon their union membership, union activity, or collective bargaining activity prior to the evening of February 17, 1937?

A. There was not. They were not interfered with in any way whatsoever.

Q. Was there any action taken with respect to them on the evening of February 17, 1937 by reason of their union activity or union membership, or participation in collective bargaining?

A. No, sir.

Q. Or at any time after that?

A. No, sir.

Q. Was there any change in your volume of production in the spring and summer of 1936?

A. There was a very substantial increase, beginning in the spring of 1936.

Q. An increase in what?

A. In volume of orders and quantity of products to be turned out.

941 Q. How was the production rate? Was that keeping pace with your increase in sales volume?

A. It did not.

Q. Was there any change in your plant supervision at or about that period?

A. There was a change in February, 1936, following the loss of our chief engineer, who had acted before that partly as an assistant to me.

I had to make some promotions, to get the assistance I required.

Q. Was production proceeding smoothly and efficiently during the spring and summer of 1936?

A. It did not. They had a number of things to turn out that they just did not get out at the times they should.

Q. Did those factors influence you in seeking the employment of Alfred Johnstone?

942 A. Those factors plus the cost at which the additional items were being produced influenced us.

Q. What do you mean by that?

A. I mean that either the workmen were not producing as they should, or the change in supervision that I made was not working out as I hoped it would.

Mr. Walsh: I object, unless he tells in what manner the workmen were not producing as they should.

Mr. Swiren: We will be very glad to amplify it for you, Mr. Walsh, so you will have all the facts.

Q. (By Mr. Swiren) Will you amplify that for Mr. Walsh, so he can understand it?

A. Well, we had been running short time during part of 1935, and we went into full time early in 1936. We know what the capacities of the machines are, and what they should turn out. They have turned it out before when we had a pressure of business.

We ran many hours more of overtime than we had run before. If we had so many thousand meters of wire to get out in a certain department in a given period of time, we did not get it. Sometimes it did not come off the machines. Sometimes the metal was blamed as being somewhat defective, and that was given as a reason for not accomplishing the result.

There was always a dozen alibis as to why the product did not come out as it should.

943 Q. Now, with respect to the matter of personal supervision, did you get any recommendations from Mr. Johnstone that you acted upon?

Mr. Walsh: I object, unless the reports are before the Board.

Trial Examiner Dudley: Objection overruled.

A. Yes. I did act on some recommendations.

Q. (By Mr. Swiren) Tell us the recommendations that

you got, that you acted upon, to the extent you remember them?

A. We had on the second floor of building 3, three departments. One was called the tool room; one was called the machine shop and heading department, and one was called the tantalum fabrication department.

The department of tantalum fabrication is a very technical one, and requires a close and intimate knowledge of the characteristics of the metal, in order to fabricate it.

The screw machine department was a department of automatic machines with expert operators. As to the heading machines of which they had six, personally, I never saw more than four running, and most of the time three were running, at one time.

Additional production equipment and repairs which were supposed to be handled through the tool department, just took so long to produce, that I found that we could have them done in much less time if we contracted for them on the outside.

944 Q. Now, what—

A. One of the suggestions Johnstone made was that Mr. Welch, who had been in charge of the machine shop, headers, and tool room, an old employee of 18 or 20 years, fully conversant with the characteristics of tantalum, might well be transferred, so as to be able to devote 100 per cent of his time to the supervision of that department.

I made that change, and hired a new foreman to take over the tool room. The man who had been an understudy to Welch, who had tried to watch tantalum fabrication, was needed as a master mechanic, in the mechanical department. He was moved, so he could carry on the new work, and we could keep up production.

Q. When were these changes made?

A. We started to build facilities for the master mechanic at the end of October.

Q. 1936?

A. 1936.

Q. Yes.

A. He was actually transferred over into his new quarters about the 1st of November. As to the new foreman of the tool room, we sought for a month to find a man to take the job, and finally secured one. I think he commenced his employment on the 15th of November.

Q. Did Johnstone recommend any changes or im-
945 provements in working conditions?

A. He suggested a number of conveniences and improvements that would make our plant measure up with more modern plants, in our 15 buildings, and we installed them.

Q. You did install them?

A. Yes.

Q. Tell us the improvements recommended by Johnstone that you acted upon and installed?

A. Late in August, shortly after he started his work, he recommended that most modern plants had both hot and cold water in the washrooms. He found that we had only cold water, and he suggested that hot water be installed.

Our engineers surveyed the job of putting in hot water, drew their recommendations, and I signed the authorization for the expenditure on the 3rd of September.

Another thing he recommended was that the ventilating capacity at the top of building 3 be increased, to clear the dust more quickly. That was recommended early in September, and I actually signed the authorization for the expenditure on the 28th of September.

Q. Was there anything else?

A. He suggested that the toilets in building 3 and building 5 were old, and had been there for many years, and that they were not what they ought to be.

We tore out the old toilets, and installed new and mod-
946 ern plumbing, in October.

Q. Were there any other changes made?

A. He suggested that the drinking water that was regularly supplied all over the plant through the bubbling fountain method was usually warm, and not cold. He recommended the installation of water coolers.

We worked out several alternate schemes, and finally put them in in October.

He also said the men in the tool room were standing around oftentimes behind the milling machine waiting to get at it. Further, he noted that it was too large a machine for a number of jobs. He suggested that could be handled with a different type of milling machine.

Q. You did purchase a new milling machine?

A. Yes. At the same time, he said the lathe they were using in the tool room might well be supplemented by a light lathe, a smaller one, for smaller work. We bought that.

Q. Were there any other mechanical or machinery changes he recommended that you acted upon?

A. Well, we had a job over there that is a difficult one in the sense that we use large carbon anodes and boxes. We usually buy that type of material in large pieces and machine out the forms that we need.

It is a dirty job, and a dusty job. He recommended the installation of improved dust extraction schemes, and he
947 also recommended the isolation of that job from the regular machine shop. We acted on that.

Another thing he suggested was that the tantalum welding department, where we had a certain amount of welding done—that the glare of the torches as applied sometimes reflects pretty severely in the eyes of the men working in what is known as the tool room division.

He suggested that it either be isolated, or be screened, so as not to permit the glare of the torches to reflect in the eyes of the men.

Q. By the way, after Johnstone came to the employee of the company, were there any individual raises given employees?

A. Yes, sir.

Q. Who approved those raises?

A. I did.

Q. You are familiar with the methods employed in granting those raises, is that right?

A. They all come to me on a card, the recommendations. They come to me for last approval.

Q. Were any of the officers or leaders, who made themselves known as officers or leaders of lodge 66 discriminated against—

A. No, sir.

Q. —in the granting of individual raises?

A. They were granted the same raises as they were justified.

Q. By the way, all of these changes you mentioned as
948 a result of Johnstone's reports were made about the dates you mentioned, or where you did not mention the dates, during the early fall of 1936, is that right?

A. The dates I mentioned are the dates I signed the authorizations for expenditure.

Q. When you did not mention dates--

A. Those expenditures are signed—or rather, those authorizations for expenditures are signed only after the job is engineered, and the bids for equipment to be installed have been received, and it has been approved.

Q. As to some of this equipment, you did not mention the dates. Could you give us a general idea, as near as you can?

A. It all happened on or before October 20th, 1936.

Q. After Johnstone had come to work for the company?

A. Yes.

Q. Did you talk to Johnstone before he came to work in the plant?

A. For a few minutes, yes.

Q. Did you give him instructions as to what he was to do?

A. I did.

Q. What instructions did you give him?

A. I told him he was in there to report to me every situation that came to his attention, that ordinarily should be recorded for correction, and not to withhold his punches.

He was to report on his own boss, the foremen of other
949 departments, working conditions, equipment, and anything of interest that would let us understand what we could do to increase production in the institution.

Incidentally, he made one criticism of me in his report.

Q. Did the company at the time of its application for membership in the National Metal Trades Association have other production and maintenance employees not listed in its application marked Board's Exhibit No. 23?

A. I think we did. These are only those that fitted our interpretation of those instructions.

Q. Instructions were for the purpose of determining the assessment to be paid?

A. That is right.

Q. That was not intended then to be a comprehensive list of all production employees, was it?

A. No. It is the basis on which they were to assess dues if, as and when we must be elected as a member.

Q. Was there any material change in respect to the company's cash working capital during the year 1936?

A. There was.

Q. When did it occur?

A. We entered into a contract in November 1935 for the sale of 20,000 shares of stock at $10 cash, and one of the provisions of that refinancing—

Q. Never mind that.

950 A. All right.

Q. Let us get down to the cash.

A. All right.

Q. Did you get $200,000 in cash?

A. We got it at the end of February 1936.

Q. Was any material portion of that devoted to plant improvements and building improvements?

A. We devoted more than 60 per cent of it to building and plant improvements.

Q. Principally during the year 1936?

A. Yes, sir, and the spring of 1937.

Mr. Swiren: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Aitchison, there was nothing in these reports of Johnstone's concerning the hot and cold water, the washrooms, the ventilation, or ventilating capacity of the plant, the drinking water situation, the purchase of a new milling machine, or the isolation of the welding that would require his reports to be destroyed, would there?

A. No, sir.

Q. These are changes, ordinary things that might have been noticed around the plant by you, if you were through the plant frequently, are they not?

A. They were recommendations that would not come to me through the foreman or others, that a stranger that
951 had just entered the employ of the plant, and who had worked in other plants, would naturally see, as he noticed their absence.

Q. Had Mr. Johnstone, to your knowledge, ever worked in a plant at which tantalum was fabricated?

A. Not to my knowledge.

Q. I believe you stated he recommended the full time employment of Mr. Welch in the tantalum fabrication department.

A. That is right.

Q. You have known Mr. Welch for 15 years, I suppose, have you not?

A. Directly and indirectly, yes.

Q. You are probably much more familiar with his work than a stranger coming into the plant, are you not?

A. Not directly.

Q. Your superintendent Mr. Henry had been with you a long time, had he not?

A. Yes.

Q. I presume Mr. Henry would probably know more about that than a stranger, would he not?

A. That was not the problem. When a man has been with you for 18 or 20 years, he builds a certain standing among the men, and he is very much against being pushed from one job to another, or transferred from one department to another, as he thinks it interferes with his standing.

As a matter of fact, when we made the change, Welch,
952 incidentally had been under discussion by Mr. Henry and our other people several times, for about three years before I moved him.

On one occasion I gave permission to discharge him, even though he had been with us for 18 or 20 years, unless he would get in harmony, and work cooperatively the way the superintendent told him to.

He is just one of those old-timers that do not line up as fast as new people do.

Q. Well, upon Mr. Johnstone's recommendation, you finally made him foreman of the tantalum fabrication department?

A. That was used as the basis for changing him from the tool room.

Mr. Walsh: I think that is all.

Recross Examination.

Q. (By Mr. Swiren.) Mr. Welch had had charge of the tantalum fabrication and tool room prior to that time, had he not?

A. Well, the tantalum fabrication has been a growth. It started in the back of the laboratory. Then it drifted into the tool room. In the tool room, part of it was handled by Welch, and part of it was handled by Howard Phillips.

There was a conflict between the two men, and it came to a place where somebody had to separate somebody from what he had been doing, in order to get results.

The result was that we decided to separate Welch from
953 his tool room, and let him go back to the painstaking work of tantalum fabrication.

Q. As I understand it then, you divided that one department into two departments, and Welch took charge of one of the two divisions of his old single department?

A. We divided it into three departments.

Q. I see. He took charge of one of those divisions?

A. He took charge of one of the three.

Mr. Swiren: That is all—no. Just a moment.

Q. (By Mr. Swiren.) Was the identity of Johnstone known through the plant?

A. No, sir.

Q. Did that secrecy have anything to do with the destruction of your reports?

A. Well, if he had been known to everybody, how could he serve me in the capacity I asked him to serve me in?

Q. Did the maintenance of that secrecy have any connection—

A. If everybody had known I had him in there, it would have destroyed his usefulness to me.

Q. Did that fact have any relation to your action in destroying his reports as they were received?

A. It did.

Q. Were individual reports limited to one item at a time?

A. No.

Q. Or were they general discussions?

954 A. They usually covered several things.

Q. So you did not have a single report suggesting the addition of a new small lathe?

A. No. That would be incorporated in his report.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: I have a few questions.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) Mr. Aitchison, was Mr. Johnstone hired as a machine operator as far as the plant was concerned?

A. Yes. He was hired as a man in the tool room, at a time when the superintendent was away on his vacation.

Q. As far as the plant was concerned, they considered him as a regular tool machine operator?

A. That is right.

Q. Did he make any other recommendations for changes in personnel besides that of Mr. Welch—is Welch the name?

A. Yes.

Q. Did he make any other recommendations?

A. He made a number of recommendations which we did not carry out.

Q. As to personnel?

A. As to personnel, and as to favoritism of the foremen

in assigning what they call the good jobs, the clean jobs,
955 to certain pets, and assigning the dirty jobs to the rest of them.

He made a number of recommendations with reference to that, some of which we could not act upon without showing our hand to the foreman, that we knew he was assigning good work to a few people as contrased with the rest of them.

Everyone of those foremen were called in and talked to about the advisability of spreading the work around, and making a general distribution, instead of just assigning the better jobs to a few people who were reported to be pets of the foremen.

Q. Did you act on any other recommendations concerning personnel besides the recommendations concerning Mr. Welch?

A. Yes.

Q. What were the others?

A. As I said, in the heading machine department, I never saw more than four or six machines running at one time.

Mr. Chiswell whom I had planned would be assistant to the foreman of the contact division was changed from that, and given charge of the heading machines alone, because he just did not function as he should with the whole contact department.

Q. Were there other changes of personnel?

A. Well, we have in our laboratory an expert on contacts, who uses principally one assistant named Dickinson.

My attention was called to the fact that Dickinson would
956 come out of the laboratory into the contact department, or into the machine department and demand so many samples of this contact, or so many samples of this screw, for laboratory purposes, which interfered with ordinary routine production.

It just is not economical to shut down a run of 50,000 of a certain article, to get out 100 of something, even for laboratory purposes.

Mr. Dickinson was forbidden to go into the shop, except upon getting an order from the superintendent's office.

Q. Were there any others that you remember?

A. You mean, changes in personnel?

Q. Yes.

A. I am sure there were some others. However, they do not jump into my mind at the moment.

Q. That is all you can think of at the moment?

A. Yes.

Q. In telling these men of the changes in their status at the plant, did you ever tell them it was because of reports given to you by Johnstone?

A. No. After I got the reports I made it a practice to go out to the plant where I knew the trouble spot was, look around a little bit, and then get them together and hand it to them as though I had noticed it myself.

Q. So they thought it was your doing—

A. That is right.

957 Q. —rather than Johnstone's?

A. Yes.

Q. Had you had reports coming in to you during the previous months, say for six months, or perhaps a year, about these various men whose positions you changed?

That is, had you had complaints by workmen, foremen, or superintendents given to you, or suggestions that there ought to be changes made there?

A. I had no recommendations or complaints by the men who are reluctant to criticize those who are bossing them. However, Luther Henry, who was, you might say, perhaps the most important foreman we had recommended, and his predecessor, Mr. Dow, had come in several times when he almost demanded that I authorize him to discharge men who had been there for many years.

In those cases I tried to discuss it and see if there was not some basis for keeping the men and covering up the trouble, and getting away from it.

On two occasions I told him, "If you cannot get together, we will have to let them go."

Q. Did you ever, on those occasions, make an investigation of the situation personally, yourself?

A. Yes.

Q. By going in and watching, or talking to people?

A. Yes.

958 Q. Had you found such investigation to be insufficient?

A. Well, I found that the trouble was not so much with the active things, but it was a sort of a passive resistance, in which they say they will do this, or do that, but it just is never done.

Q. That was a passive resistance to your suggestions at the time?

A. That is right.

Q. Did you ever, as a result of your own personal investigations make definite changes in the status of personnel?

A. Yes.

Q. That was done, I suppose, on your own orders?

A. Yes. As a matter of fact, I went out in 1932 to see whether we would wash the company up in bankruptcy, or try to keep it afloat. I started immediately to make changes high in the institution, because obviously when you dispense with the president of the company, you save a lot more money than if you fire a basketful of workmen.

So, it took a little while to get down lower in the ranks to see where we could better the institution.

Q. Have you found that the changes made as a result of your own personal investigation, had a good effect?

A. I think they did.

Q. When did you destroy the reports submitted by Johnstone?

A. As fast as I read them. I read them at home, 959 and destroyed them.

Q. Did you ever take them to the factory?

A. No, sir.

Q. Do you have anything in your company files that would indicate the basis for changing the position of Mr. Welch, or changing the work of Mr. Chiswell, or Mr. Dickinson?

A. We just got them in the office, and talked to them When we got through convincing them that it would be advantageous to the company, and to everybody's benefit, we would say "That is what we are going to do starting Monday."

Q. You have no files which would indicate that because of certain factors, or because of certain investigations you were changing these various men in their duties?

A. In dealing with the men, we very seldom use written orders stating why we do this, that, or the other thing.

Q. Do you have any reports in the files concerning the changes which you made as a result of your own personal investigations, which you mentioned?

A. The reports I wrote up, you mean, or somebody wrote up?

Q. Yes. I understood you to say that you had made some personal investigations, as a result of which you had made some changes.

A. That is right.

Q. That is, changes with reference to the status of these employees.

960 A. Yes.

Q. On these occasions did you put in the files of the company the reasons for such changes?

A. Whenever there were changes that had to be made, I went out and made them.

Q. Without making any record of the reasons for them?

A. Yes.

Trial Examiner Dudley: That is all.

The Witness: It is a small company after all. You do not have to handle it like you do a steel company. The boss is pretty close to the people.

Trial Examiner Dudley: That is all I have.

Mr. Walsh: That is all.

Mr. Swiren: I have nothing further.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: You may call your next witness, Mr. Walsh.

Mr. Walsh: Mr. Abbott.

O. R. ABBOTT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) Will you state your full name, please?

A. O. R. Abbott.

Q. Where do you live, Mr. Abbott?

961 A. 6949 Merrill Avenue, Chicago.

Q. What is your business or occupation?

A. Office manager for the National Metal Trades Association.

Q. Your address is 122 Michigan Avenue?

A. That is correct.

Q. Chicago, Illinois.

A. Yes, sir.

Q. In response to a subpoena from the National Labor Relations Board, you produced certain records, I believe, did you not?

A. Yes.

Q. Will you refer to the minutes of the executive committee of the National Metal Trades Association for March the 24th, 1937?

A. Yes.

Q. Do you find in those minutes a reference to the Fansteel Metallurgical Corporation?

A. I do.

Q. What is that reference?

A. "Applications accepted. It was moved and seconded that the following applications be accepted:", and Fansteel is mentioned among several others there.

Mr. Walsh: Will you read that answer, please, Mr. Reporter; I did not hear the first part of it.

(The answer was read.)

962 Q. (By Mr. Walsh) Did you have some contact with the Fansteel Metallurgical Corporation prior to their admission as a member of your organization?

A. Yes, sir.

Q. What was the first date that you had any contact with anybody from that company?

A. On or about the 15th of August 1936 Mr. Aitchison came into our office in Chicago.

Q. Did you talk with Mr. Aitchison at that time?

A. I talked with him part of the time, and he held a conference with our secretary, Mr. Flynn.

Q. Mr. Flynn, you say?

A. Mr. Flynn.

Q. As a result of the conference did the Association render some service to the company?

A. It did.

Q. What was that service?

A. Two days later Mr. Flett, our membership man came up here and secured a membership application from the company, and at about the same time a confidential operative was assigned to the shop.

Q. What was the name of that operative?

A. Alfred Johnstone.

Q. What trade does he follow?

A. He is a machinist, tool and diemaker.

963 Q. Is he an expert on the efficiency of plant supervision?

A. He is an old time machinist, and quite an elderly man. Almost anybody who has worked around shops all of his life, can go into one shop and suggest improvements, where people

who are ordinarily there would not discover the need for them.

Q. He was not a plant engineer, was he?

A. He was not, no, sir.

Q. I will ask you whether or not he was an expert in the efficiency of tool machine equipment?

A. I consider that he was. He was a tool and diemaker.

Q. He was a tool and diemaker?

A. Yes.

Q. He was not a mechanical engineer, was he?

A. He was not.

Trial Examiner Dudley: What was the answer, Mr. Reporter?

(The answer was read.)

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh): Would you say he was an expert on the morale of employees?

A. I would consider him such, yes, sir.

Q. What would lead you to believe he would be an expert in that field, Mr. Abbott?

A. He worked in shops all of his life, probably 30 964 years anyway.

Q. How old a man is he?

A. Anywhere from 50 to 55.

Q. I believe in your testimony before the Senate Committee, Senator LeFollette asked you whether you knew that in 1919 this man had been indicted for inciting strikes and riots. Is that correct?

A. He did not ask me that. He asked me if Sherman Service had been indicted for inciting strikes and riots.

Mr. Swiren: Give us the page reference of the testimony you are referring to, Mr. Walsh.

Mr. Walsh: It is page 872, I believe, of part 3.

Mr. Swiren: All right.

Mr. Walsh: Pardon me. That is correct. The Sherman Service was indicted.

Q. (By Mr. Walsh): Did you furnish any other operatives or guards, or workers—

A. We did not.

Q. —to Fansteel?

A. We did not.

Q. At the conclusion of their present difficulties, did you send them any employees?

A. We did not.

Q. The National Metal Trades Association is an old organization, I believe, formed in 1899, is that right?

965 A. Yes.

Q. Since that time it has been the policy of the members of the Association to conduct their business on the open shop plan, is that right?

Mr. Swiren: That is objected to, as not being material to the issues here. The only question here is the conduct of this respondent, the Fansteel Metallurgical Corporation.

Trial Examiner Dudley: I will overrule the objection. He may answer.

A. The plants have been operated on an open shop basis, yes.

Q. (By Mr. Walsh) It is also one of the principles of that organization that the members of the organization will not deal with their striking workmen as a body, is that right?

Mr. Swiren: That is objected to. It has no application to this case. It is not tied up with the Fansteel Metallurgical Corporation in any way.

The testimony is that the president of the Fansteel Metallurgical Corporation did not know anything about that kind of a principle. He said on the stand that they were handling their own affairs.

Further, there is no evidence of a socalled strike. The evidence is here that some men went out and seized the plant. We do not know whether that is counsel's definition of a strike or not.

966 Trial Examiner Dudley: The evidence shows that the company is a member of the Association.

Mr. Swiren: The evidence also shows that the company became a member long after any of the acts complained of in the complaint were alleged to have occurred, and had no knowledge of any of the matters concerning which counsel is now examining this witness.

Trial Examiner Dudley: The evidence will show that they became a member in the latter part of March, 1937.

Mr. Swiren: No. They became a member in April, 1937.

Trial Examiner Dudley: All right, in April, 1937.

Mr. Walsh: It was March 24th, to be exact.

Mr. Swiren: No. To be exact, the company became a member when they paid their first installment of dues, which was in April, 1937.

The Witness: That is correct.

Mr. Swiren: Is that not right, Mr. Abbott?

The Witness: Yes.

Trial Examiner Dudley: The application was accepted on March 24th.

The Witness: It does not take effect until the initial assessment has been paid.

Trial Examiner Dudley: I see. The Fansteel Metallurgical Corporation is now a member of the Association, is it not?

The Witness: They are on a 90 day probationary
967 period, from the time their initial asssessment was paid.

Trial Examiner Dudley: I will overrule the objection. You may answer the question.

The Witness: What was the question?

Trial Examiner Dudley: Read the question.

(The question was read.)

A. Well—

Q. (By Mr. Walsh) What is the second declaration of principle of your Association?

Mr. Swiren: That is objected to upon the grounds stated for the objection to the previous question.

Trial Examiner Dudley: Overruled.

The Witness: Our constitution and by-laws are in the process of revision. The revision has not been approved by our membership, and our executive officers.

Mr. Walsh: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Walsh: I will hand you this, to refresh your recollection.

The Witness: I just stated that our constitution was in the process of being revised. There are a lot of things in here that do not apply—or will not apply probably ten days or two weeks from now.

Q. (By Mr. Walsh) At the time the application for membership of this company was filed, you were operating
968 under the principles, the declaration of principles that appear in the Senate Committee testimony, is that right?

Mr. Swiren: That is objected to. That does not have anything to do with this respondent. In fact, the testimony is directly the opposite.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh) Mr. Abbott, will furnish me a copy of that constitution, and of the by-laws and the declaration of principles as they were at the time this application was filed?

A. I do not have one with me, for the reason that—
Q. I did not call for it in the subpoena.
A. —you did not call for it in the subpoena.
Mr. Walsh: If you will furnish that, Mr. Smith can send it out, and we will put it in the record.
The Witness: All right.
Mr. Swiren: Not with out consent, of course.
Mr. Walsh: We did not expect you to consent, Mr. Swiren.
Trial Examiner Dudley: You are objecting at this time to what?
Mr. Swiren: I just wanted to make it perfectly clear that a constitution with which we were not familiar, of a body of which we were not a member, does not go into the record with our consent.
Trial Examiner Dudley: You are stating that you will 969 object when it is offered in evidence?
Mr. Swiren: I do not want Mr. Walsh misled.
Trial Examiner Dudley: The Examiner will note your intention.
Q. (By Mr. Walsh) Mr. Abbott, will you also furnish me a copy of the application of this corporation for membership in your Association, so I can give this copy back to Mr. Swiren?
A. Yes.
Q. Now, during the time Johnstone was in the service of this corporation, did he report directly to Mr. Aitchison, or did he report to the company, or did he report to the Association, and the Association in turn report to Mr. Aitchison?
A. He reported directly to me up through the month of October. After that he reported directly to Mr. Aitchison, until about the 1st of December.
Q. Was there any reason for that change in the matter of reporting?
A. Yes. On the 1st of November we received a subpoena from the Senate Committee.
Q. In response to that subpoena you changed the form of reporting, is that right?
A. We had, a few days previously, for the reason that we had received word we were to be drawn into the hearing.
Q. What reason did the company assign to you for its 970 discontinuance of this service?
A. The man's wife had developed some mental trouble; due to the fact he had been off so much, the foreman complained about it, and Mr. Aitchison, I believe, decided to drop him.

Q. Is Johnstone still in your employ?
A. He is not.
Trial Examiner Dudley: What was the answer?
The Witness: He is not.
Mr. Walsh: You may inquire.
Mr. Swiren: No questions.
Mr. Walsh: That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) Mr. Abbott, when did Mr. Johnstone leave your employ?
A. His service extended from August 17th until December 1st, 1936.
Q. You let him go from your Association as of December 1st, 1936?
A. Yes, that is right, yes, sir.
Q. Had he done work for you before you assigned him to the Fanstell Corporation?
A. He had not. I had known of his employment in other plants, and I called him in for Mr. Aitchison. We assigned him to this operation.
Q. He had not worked for or through you previously?
971 A. No.
Q. What was the nature of his employment by other plants about which you said you knew?
Mr. Swiren: If the Examiner please, we object to this line of inquiry, unless it is brought home to the respondent corporation.
Trial Examiner Dudley: The objection is noted.
The Witness: Repeat the question, please.
Trial Examiner Dudley: Read the question.
(The question was read.)
A. He had been employed as a machinist and tool and diemaker.
Q. (By Trial Examiner Dudley.) Had he been employed in any other capacity?
A. I recall that he said he had worked at one time for the Corporations Auxiliary.
Q. For the what?
A. Corporations Auxiliary.
Q. What is that? What does that mean? I do not know what that term means.
A. The Corporations Auxiliary is a detective agency.

Q. Where does it operate?
A. It is out of business.
Q. Where did it operate?
Mr. Swiren: We object to the entire line of inquiry, if the Examiner please.
972 Trial Examiner Dudley: The objection is noted.
Mr. Swiren: It does not have any pertinency.
The Witness: It had offices in all the principal cities of the country, east of the Mississippi River, I believe.
Q. (By Trial Examiner Dudley.) What was the date of its operation, approximately?
A. I have known of their existence for twenty years. They went out of business around the 1st of February, I believe.
Q. Do you know how long approximately Mr. Johnstone had worked for Corporations Auxiliary?
A. Some time during the world war period.
Q. Do you know for how long a time?
A. No.
Q. Referring back to the visit of Mr. Aitchison to your office on about August 15th, 1936, and to your subsequent assignment of Mr. Johnstone to the plant, would you tell me the arrangements which you had with the Fansteel Corporation for Mr. Johnstone's services at that time?
A. Mr. Aitchison indicated he wanted a man to go into the plant and make a general checkup as to production efficiency, and safety, and see if there was any dissatisfaction. If there was, he wanted to know what it was, so he could make an effort to correct it.
Q. What were your arrangements for Mr. Johnstone's services?
A. The company was to be billed at the rate of $225
973 a month, and this man's shop earnings would be credited against that amount.
Q. Was the $225 per month paid to your Association?
A. It was, upon the rendering of an invoice.
Q. Did you send an invoice to the Fansteel Company once a month?
A. We did.
Q. For $225?
A. With the shop earnings credited against the amount.
Q. Then they reported to you the amount of the shop earnings, or Mr. Johnstone reported to you the amount of the shop earnings?
A. Johnstone reported that.

Q. Johnstone reported that, and then you submitted a bill to the corporation for the balance?

A. That is right.

Q. And they remitted to you?

A. That is correct.

Q. Then did you pay Johnstone something out of the $225 in addition to his shop earnings?

A. We did.

Q. Was your arrangement with the Fansteel Corporation in writing?

A. It was not.

Q. Was it by the exchange of letters or memoranda of any kind?

974 A. It was merely a verbal agreement.

Q. It was entirely a verbal agreement?

A. Yes.

Q. How much did you pay Mr. Johnstone?

A. $200 a month.

Q. $200?

A. Yes.

Q. The Association kept $25 per month—

A. Yes.

Q. —for its own services?

A. Yes.

Q. Do you know of any time previous to this at which Mr. Johnstone had served as an expert on the various matters about which you and he have testified, and that Mr. Aitchison recalled, such as efficiency of production, and similar matters, other than the mere operations of the machines and the mere work of a diemaker?

A. Corporations Auxiliary handled similar work.

Q. His experiences with Corporations Auxiliary was the only experience that he had for this work, outside of his operation of the machines and the making of dies?

A. I believe so.

Trial Examiner Dudley: That is all.

Q. (By Mr. Walsh.) As a matter of fact, he had worked for Sherman Service, had he had?

975 A. I believe there was some reference made to that, yes.

Q. Do you know of any other detective agency for which he had worked?

A. No.

Q. Over how long a period have you known Johnstone?

A. He had been coming in to see us for about a year and a half previous to August 1936.

Q. Had you ever assigned him to any other job?

A. I had not.

Q. Then this is the only assignment he has ever had from your company, is that right?

A. That is correct.

Q. Sherman Service is an industrial detective agency, or was an industrial detective agency, was it not?

Mr. Swiren: We object to that, if the Examiner please. There is not even a tie-up between Johnstone and that. The witness said there was some kind of a reference to it, and that is all.

Trial Examiner Dudley: I will overrule the objection.

Mr. Swiren: Unless this witness knows there is a tie-up, and tells what it is so we can get the facts, I cannot see any basis for this speculation.

Trial Examiner Dudley: I will overrule the objection, and admit the testimony for what it may be worth.

Mr. Walsh: Read the question, please.

976 (The question was read.)

A. It was, at one time.

Q. (By Mr. Walsh.) Is it now out of business?

A. No. They are handling industrial engineering work at the present time. I think they operate under the name of Industrial Standards Corporation.

Q. Do they have a local office?

A. They do.

Q. Corporations Auxiliary ceased its operations in February of this year, is that right?

A. Sometime in the winter, yes.

Q. They were principally an industrial detective agency, were they not?

A. That is right.

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh.) As a matter of fact, Johnstone was an industrial detective, was he not?

A. I would not class him as such.

Q. You paid him the same rate that industrial detectives get, did you not?

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: What do you mean by "industrial detec-

ives"? I assume Examiner Dudley and you know, and
977 possibly the witness knows, but I do not know what you mean.

The Witness: I do not know what he received—

Mr. Swiren: Just a moment. I would like to find out about this.

Mr. Walsh: Read the question, please.

(The question was read.)

A. I have no way of knowing what he received previously.

Q. (By Mr. Walsh.) Are you generally familiar with what industrial detectives are paid?

A. I am not.

Q. Are you generally familiar with what operatives of this character are paid?

A. I know how much we paid our own men, yes, sir.

Q. Do you know whether other companies pay better or pay less than you do?

A. I do not.

Q. Do you know what any other company pays for men of this type?

A. I do not.

Q. I will repeat my question: Johnstone is an industrial detective, is he not?

A. I would not consider him as such, no, sir.

Q. You would not?

A. No.

Q. In what way did he fall short, or was he long of
978 that particular classification?

A. In this particular instance he was sent in to make an analysis of the production problems in the shop.

Q. Would the union activity of the men in the shop be one of the things he would concern himself with?

A. It was not discussed with him at the time.

Q. Did he file any expense accounts with you while he was on the job?

A. Merely for transportation, yes.

Q. Did he file any expense accounts in which he claimed reimbursement for dues paid to the union?

A. He did not.

Q. Do you know whether he paid any dues to the union?

A. I do not know whether he did or not. We paid him. I do not know what he did with the money.

Mr. Walsh: That is all.

Trial Examiner Dudley: Do you have any questions, Mr. Swiren?

Mr. Swiren: I have no questions.

Mr. Walsh: That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Abbott, I am not sure I understood your testimony on one point. You have testified that you sent him to Fansteel to make an analysis of productioin problems in the shop.

979 You have testified also that the only experience which he had that you know of was that of the operation of a machine and a maker of dies, and his experience with Corporations Auxiliary, which you have described practically as a detective agency.

Where are the facts upon which you based your judgment that he would be an expert on problems of production?

A. Any machinist or tool and diemaker who has had unlimited experience at his trade—almost any individual of that kind can go into any establishment, and he is bound to recommend some improvements, because no two concerns operate the same way.

Q. Does that give him a basis for judgment as to the transfer of personnel, including the promotion or demotion of foremen and managerial personnel?

A. He can be qualified to make recommendations; they would not need to be accepted.

Trial Examiner Dudley: I have no further questions.

Q. (By Mr. Walsh.) To your knowledge, had he ever worked in a plant at which tantalum was either manufactured or fabricated?

A. I do not believe there are any more than two or three plants in the country that make it.

Q. Do you know whether he had ever worked in such a plant?

A. I do not.

980 Q. You did not inquire of him, did you?

A. In this particular instance they wanted a machinist and tool and diemaker. There was nothing said about tantalum, or anything like that.

Q. I believe you heard Mr. Aitchison testify he recom-

mended that Mr. Welch be transferred from one position, to foreman of the tantalum fabrication department?

Mr. Swiren: I think in fairness to the witness and the testimony, it ought to be stated that what he testified was that he recommended that he be relieved of the supervision of the tool room, so that his activities could be confined to the division of tantalum fabrication.

Trial Examiner Dudley: The record will so show.

Mr. Swiren: There is no point in not giving the whole statement to the witness.

Mr. Walsh: The witness heard the testimony.

Trial Examiner Dudley: Is there a question pending?

Mr. Walsh: I will withdraw whatever question there is pending. I have no further questions.

Q. (By Trial Examiner Dudley.) What reports—let me phrase it this way: with reference to the reports which Mr. Johnstone submitted to you up until I believe it was October 1936, do you keep copies of those reports?

A. We did not. It had been our custom to destroy them, every time they were written up.

981 Q. Do you have any reports now concerning the activities of Mr. Johnstone at the Fansteel Corporation?

A. I do not.

Q. You have no written evidence of what he did, the kind of work he performed, where he went, or his observations and recommendations?

A. I do not.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren.) Did I understand you to say that Mr. Aitchison asked you for a machinist and tool maker?

A. He did.

Q. Did he say anything to you about wanting to get the point of view of the man at the machine, or the man at the bench?

A. He did. He said he wanted a general analysis of conditions, in the shop, as he found them.

Mr. Swiren: That is all.

Trial Examiner Dudley: That is all. Thank you very much.

(Witness excused.)

Mr. Swiren: I now move that all of the testimony of Mr. Abbott be stricken as not being material to any of the issues in this case.

My first objection pertains—his testimony is divided into two classifications—to the testimony with respect to the National Metal Trades Association, which clearly is not material. There is no provision of the act here under
982 consideration that I know of that prohibits membership in the Association.

My second objection pertains to the employment of Johnstone. There is nothing in that respect that is in any way material to any of the provisions of the Act, or any of the acts charged in the complaint.

I think the entire testimony of the witness should be stricken.

Trial Examiner Dudley: It seems to me, Mr. Swiren, that the testimony of Mr. Abbott is connected up, in the present investigation, by reason of the application of the corporation for membership in the fall of 1936, and its admittance to membership in the spring of 1937.

It also is connected up because of the inquiry made by Mr. Aitchison, and also by reason of the information he gave about the nature of Mr. Johnstone, whose activities are under investigation.

Therefore I will overrule the motion.

Mr. Swiren: The testimony with respect to the National Metal Trades Association and its membership and constitution has nothing to do with Mr. Johnstone.

Trial Examiner Dudley: Your comments are noted for the record.

Mr. Walsh: Mr. Examiner, I had previously subpoenaed Mr. Henry B. Sayre for the production of certain production work material of this Association.

983 Those records have been produced by Mr. Abbott. I more that Mr. Sayre be excused from answering the subpoena.

Trial Examiner Dudley: Mr. Sayre is so excused.

Mr. Walsh: May we have a short recess?

Trial Examiner Dudley: Yes. We will take a short recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will reconvene.

Mr. Walsh: This is Mr. Lester Collins—

Mr. Swiren: Speak up a little louder, please, Mr. Walsh.

Mr. Walsh: This is Mr. Lester Collins, who desires to enter his appearance for the Amalgamated Association of Iron,

Steel, and Tin Workers of North America, Lodge 66, as provided by article 2, section 25 of the rules and regulations.

I would like to have that noted of record.

Trial Examiner Dudley: Does counsel for the respondent have any objection to the entry of Mr. Collins' appearance?

Mr. Swiren: No. We welcome it.

Trial Examiner Dudley: The appearance of Mr. Collins for Lodge 66 may be noted in the record.

Mr. Walsh: In case you did not observe it, Mr. Collins, this is our side of the table.

Mr. Swiren: We are not trying to entice him over to our side.

Trial Examiner Dudley: Are you ready to proceed now?

984 Mr. Walsh: Yes.

Trial Examiner Dudley: Call your next witness.

Mr. Walsh: I will call Mr. Kondrath again.

JOHN A. KONDRATH, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination.

Mr. Walsh: This witness has been previously sworn, and has claimed his privilege.

Q. (By Mr. Walsh.) Mr. Kondrath, do you know a man by the name of Alfred Johnstone?

A. I do.

Q. I will ask you whether you signed him up as a member of Lodge 66?

A. I did.

Q. Do you remember when you received his application for membership?

A. I really don't remember the date, but it was shortly after he got employed at Fansteel.

Q. I will ask you whether he became an officer of the union.

A. No, he didn't.

Q. Did he take an active interest in union affairs?

A. He did.

Q. Just tell the examiner what he did in the union.

A. Well,—

985 Mr. Swiren: Just a moment. That is objected to unless it is shown to be by the authority of the respondent.

Mr. Walsh: I think probably it was within the apparent scope of his authority as an employee of your company—

Trial Examiner Dudley: You mean, you want to assume authority for all he did?

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: Do you want the corporation to assume authority for all that Mr. Johnstone did?

Mr. Swiren: No. If they want to bind the corporation, I think they must prove authority.

Trial Examiner Dudley: The objection will be overruled. The testimony may be admitted for what it may be worth.

Mr. Walsh: Read the question.

(The question was read.)

A. Well, every time there was any meeting to be called, why, we quit at 4 o'clock, and he would say, "Well, I should go to Chicago", he says, "but what is the difference?" He says, "I suppose my wife is drunk. I don't get to see her anyway. I might just as well stay here for the meeting."

Well, the meeting would not open up until 8 o'clock, or sometimes 8:30, and he would stay here. He did that a number of times. On one particular time there was a meeting at Chicago on the south side. I asked him if he cared to go.

"Oh, yes," he says, "I am very interested in labor meet-

986 ings." He says, "In fact, I used to belong to the Federation of Labor in Chicago." He mentioned the Local number, but I don't remember the Local number any more. He came to that meeting, too.

He was very anxious for all meetings and everything. He wouldn't miss a meeting on a bet.

Q. (By Mr. Walsh.) I will ask you whether you heard him urging employees to strike.

Mr. Swiren: That is objected to. Counsel ought to know better than to suggest the answer in the question.

Trial Examiner Dudley: Objection overruled.

The Witness: Well, at one time he wanted to know how much members we have, and I told him we—

Mr. Swiren: Let us find out the time and place of that conversation, so we can follow it.

The Witness: Most of this conversation was in meetings, and sometimes in the shop.

Mr. Walsh: Go ahead.

Mr. Swiren: I submit we are entitled to have the time and place of any conversations that are going to be related in the testimony.

Trial Examiner Dudley: I will ask the witness to be as definite as he can in giving dates, times, and the places at which any of this conversation or action took place, about which he is going to testify.

The Witness: I couldn't give any date, because I
987 can't remember all the times that he said this, or I said that, or anything like that. It is too long of a time.

Q. (By Trial Examiner Dudley.) Tell us all that you can about what Mr. Johnstone did in connection with the union.

A. Well, he thought that if the union was strong enough, the only thing that would make them recognize it would be a strike, but we told him we didn't want to strike.

We told him we would like to have 100 per cent membership, so the company would realize that we really wanted a union and collective bargaining.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) Do you remember when it was that you had this last conversation with Mr. Johnstone, the one you mentioned last?

A. No, I don't remember.

Q. Do you remember approximately?

A. Well, it was before I got taken over in the office.

Q. You went over to the office in November, did you not? It was November 1st, or thereabouts, was it not?

A. No. It was around Armistice Day. It must have been around the first part of—

Q. Would you say that conversation took place in October 1936?

A. Yes, I would; about that time.

988 Q. About that period?

A. Yes.

Q. Then about that time you told him the union did not want to have a strike, is that right?

A. That is right.

Q. You did not call it?

A. No.

Q. None occurred at that time?
A. No.
Q. By the way, was Johnstone on the bargaining committee?
A. No. How could he be? He wasn't there, on the bargaining committee.
Q. Well, I do not know who the officers and the committee were. Do you know any committee he was on?
A. No. He wasn't on any committee that I could remember.
Q. You were president of the local, were you not?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Trial Examiner Dudley: You may call your next witness.
Mr. Walsh: Mr. Du Bois.

RAYMOND E. DUBOIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified 989 as follows:

Direct Examination.

Q. (By Mr. Walsh.) Will you state your full name, please?
A. Raymond E. DuBois.
Q. Where do you live?
A. Waukegan.
Q. You were employed by the Fansteel Metallurgical Corporation?
A. Yes, sir.
Q. What is your job down there?
A. Tool maker.
Q. How long have you been employed by the Fansteel Metallurgical Corporation?
A. Since Armistice Day, 1935.
Q. How long have you been a tool maker?
I learned the trade at the American Can in 1926.
Q. Since 1926 you have been a tool maker?
A. Yes, sir.
Mr. Walsh: Mr. Examiner, counsel for the Lodge is not

present at this time. I request you to advise this witness of his privilege, and ask him whether he claims it.

Trial Examiner Dudley: Does he know the nature of the privilege?

Mr. Walsh: I think he does. I have explained it to him.

Trial Examiner Dudley: Do you wish, Mr. DuBois, 990 to claim the privilege of immunity from any crimes, misdeeds, or illegal acts that you may have committed, about which you may testify during this hearing?

Do you know what I mean?

The Witness: Not altogether. I would like to have you make it a little more clear.

Trial Examiner Dudley: Normally speaking, a witness cannot be compelled in court to give testimony which might be used to incriminate him, that is, which might be used against him to convict him of a crime, misdemeanor, or other wrongful act.

The National Labor Relations Act provides, however, that a witness must give such testimony under subpoena, but if he requests the privilege, he cannot be held guilty of any such acts about which he testifies.

Do you want to claim the privilege of protection from any possible punishment for acts about which you will testify?

The Witness: Why, sure. All I know is the truth.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh.) I will ask you if you had a chance to work Johnstone work when he was employed at the plant.

A. Yes, sir; I did.

Q. I will ask you whether he appeared to be a good tool and die maker.

Mr. Swiren: That is objected to. I do not see that 991 that has any materiality, nor can we get anything but this witness' own conclusion.

Trial Examiner Dudley: The witness has testified that he has been a tool maker at least since 1926. Therefore, he should be capable of forming a judgment about Mr. Johnstones apparent ability.

Mr. Swiren: Perhaps he is, and perhaps he is not. I do not know why we should speculate as to whether he can form an opinion, merely because he has been a tool maker.

Mr. Keele: How can it possibly be material, as to whether the man was white, black, parted his hair in the middle, or on the side, or whether he was a good tool maker or not?

His instructions have been shown. It has been shown what he was there for. The question of whether or not he was an expert tool maker, it seems to me, cannot possibly be material here. I would like to hear counsel's views as to why he thinks it is material.

Mr. Walsh: I think there has been some testimony that this man is an expert in several fields. I would like to show that, at least, in the view of this witness, he was not an expert in the field for which he was employed, that is, that of being a tool and die maker.

We might draw an inference from that as to whether he was an expert in the field of plant supervision, and also an expert in the other fields concerning which there has
992 been testimony.

Trial Examiner Dudley: I will overrule the objections as to its materiality, but I would suggest that Mr. DuBois perhaps had better qualify it by testimony as to the basis for his judgment, as to his ability to observe Mr. Johnstane's work, and so forth.

Q. (By Mr. Walsh) Mr. DuBois, you have worked at the trade of tool maker since 1926?

A. I have.

Q. Did you observe Johnstone as he pursued his daily tasks in the plant?

A. I did.

Q. I will ask you whether, in your opinion, he was a competent tool maker.

Mr. Swiren: The same objection.

Trial Examiner Dudley: Objection overruled.

The Witness: There is quite a story to that. May I answer by telling the story, or should I say "yes" or "no"?

Mr. Walsh: You may tell the story.

Mr. Swiren: I object to getting stories. Let us get the facts in answer to the question.

Trial Examiner Dudley: I assume the witness means by "story" that there is considerable information which he can give.

The Witness: Yes, actual happenings.

993 Trial Examiner Dudley: We appreciate getting all the information we can. We will appreciate your giving us all the information you can along this line.

The Witness: There was several times in the shop when work had been given to Mr. Johnstone, when his ability wasn't sufficient to carry the job to the point of satisfaction, due to

Mr. Haskell's and Mr.—his name is the same as my name, only it is in German—well, anyhow, he was metallu gical man down there.

Anyway, he couldn't do it to their approval, because there has been many a time they would say, "Let Frenchy or one of the other fellows finish the job" or "Let Frenchy or one of the other fellows do the job", because he couldn't get the molds to line.

They was pouring a new metal called haskelloid. They was making these molds out of graphite, and they had to match the two halves and line them perfectly, so that the metal would come out in proper shape.

There were several other things down there that he spoiled, and there was quite a controversy about it. Whether it was lack of experience or nervousness, I couldn't tell at that time.

Q. (By Mr. Walsh) Did you form an opinion as to his ability as a tool and die maker from having seen him work?

A. Well, my opinion was—

Mr. Swiren: Just a moment.

The Witness (Continuing): —he wasn't so very good at it.

994 Mr. Swiren: The answer to that question is "yes" or "no."

Q. (By Mr. Walsh) Answer that question "yes" or "no", please.

Mr. Swiren: I ask that the question go out, and I want an opportunity to be heard on what his opinion is.

Trial Examiner Dudley: He asked—

Mr. Swiren: He has already made a statement which I think ought to go out, because it is not responsive to the question. The question was whether he formed an opinion or not.

Q. (By Trial Examiner Dudley) Did you form an opinion?

A. Give me the question again.

Mr. Swiren: I am asking, Mr. Examiner, that the answer be stricken as not responsive to the question, and that the witness be not permitted to answer another question until there is a ruling on that motion.

Trial Examiner Dudley: I will grant your motion.

Mr. Walsh: Read the last question, please.

(The question was read.)

Mr. Swiren: You may answer that "yes" or "no."

Trial Examiner Dudley: Do you understand the question?

The Witness: I can't answer that.

Mr. Walsh: Well, let us put it another way:

Q. (By Mr. Walsh) Did you make up your mind whether he was a good tool maker or a bad tool maker?

A. I did.

Q. Well, was he a good tool maker or a bad tool maker?

995 Mr. Swiren: We object.

Trial Examiner Dudley: Objection overruled.

The Witness: Well, he was a long ways from being a good tool maker.

Q. (By Mr. Walsh) Well, what kind of a tool maker was he?

A. Well, I never classed myself as first class, but there was a lot of things that come up down there I am sure I could have done that he fell down on.

Mr. Walsh: You may inquire—just a moment. I have one more question.

Q. (By Mr. Walsh) I will ask you whether or not Johnstone took an active interest in the work of the union.

Mr. Swiren: That is objected to as calling for a conclusion. We ought to have the facts.

Trial Examiner Dudley: Objection overruled.

The Witness: He did.

Q. (By Mr. Walsh) What did he do or say with reference to the union, and its activities?

A. He seemed to be very radical at times.

Q. What do you mean by "radical"? What would he say?

A. He would want us to force the issue. He was going to get laid off, he said, and he was laid off, and he wanted us to go on strike in order to reinstate him in his position.

Q. Did he make any other remarks about striking?

A. Well, there were several times he made remarks
996 to me. I can't just exactly remember them. I can remember the answer I gave him, that I told him.

Q. But you do not recall just what wording he used, is that right?

A. No, sir; I don't.

Q. What was the general tenor of his remarks? What were the remarks about?

A. Well, the remarks were to get us to take action in his behalf. I told him, according to his ability to work, I didn't see how we could.

Q. What action did he want you to take?

A. To strike, and to force an issue to reinstate him.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Mr. DuBois, did you ever call a strike at his request, Johnstone's request?

A. No.

Q. You did not follow his advice with respect to calling a strike, then, is that right?

A. No, sir.

Q. His request that you call a strike for getting him reinstated came after December 1st, 1936?

A. The what?

Q. You knew that Johnstone was discharged on December 1, 1936, did you not?

997 A. I don't know when he was discharged.

Q. You saw he was not around after that date, did you not?

A. I presume so. I don't remember the exact time.

Q. This request for a strike to get him reinstated came when, with reference to December 1, 1936?

A. I know it was along during the last part of the time he was there.

Q. That was toward the end of November 1936?

A. I don't remember the date.

Q. At that time he came and asked to get some action from the union to get him reinstated?

A. He did, as a member of the union.

Q. Why did he ask to be reinstated, if it was before he had gotten out, or before he had been discharged, do you know?

A. I couldn't tell you that.

Q. You did not ask that at the time, did you?

A. No, I didn't.

Q. You did not say to him, "Why, Johnstone, you are still working. Why do you want us to take action to get you reinstated?"?

A. At times I wouldn't say anything.

Q. You did not say that, or anything to that effect to that, is that right?

A. I didn't say what?

Mr. Swiren: Read the question, Mr. Reporter.

998 (The question was read.)

A. I didn't say anything.

Q. (By Mr. Swiren) You said nothing to that effect?

A. No.

Q. Who is the Mr. Haskell you referred to in your direct examination?

A. He is a fellow by the name of Roy Haskell, who is working in the laboratory down there.

Q. By the way, where have you worked since 1926?

A. Well,—

Q. Let us start with 1926. Where were you working then?

A. At the American Can.

Q. Were you in the tool room there?

A. Yes.

Q. How long did you stay there?

A. I was there about 3 years.

Q. That brings us to 1929, is that right?

A. Yes, sir.

Q. Where did you work then?

A. At the Western Electric.

Q. At which plant?

A. 22nd and Cicero, Chicago.

Q. How long did you remain there?

A. About 2½ years.

Q. Did you do any work on cast alloys and vascoloy 999 ramet at either of those plants?

A. No, sir.

Q. Where did you work after you left Western Electric?

A. I was a maintenance man building dams up in northern Michigan.

Q. I take it you did not encounter vascoloy ramet and cast alloy work there, did you?

A. Not much; no, sir.

Q. Then where did you work?

A. I went from there over to Commerce Pattern in Detroit.

Q. How long did you remain there?

A. No, wait a minute. I was at Motor Products in Detroit, on Mack Avenue.

Q. How long did you work for Motor Products?

A. About 1½ years.

Q. Did you voluntarily leave?

A. No. There was a strike over there.

Q. By the way, did you leave the other jobs you just referred to, voluntarily?

A. Yes, the one at Michigan, but not at Western Electric. I was laid off there during the depression.

Q. Where did you go from Motor Products?

A. Commerce Pattern.
Q. How long did you work there?
A. Well, I can't tell you that.
1000 Q. How long, approximately?
A. It wasn't very long; I wasn't there very long.
Q. Did you voluntarily leave there?
A. I did.
Q. Where did you go then?
A. To Johnson Motor Company.
Q. That is in Waukegan?
A. Yes.
Q. How long did you work at Johnson Motors?
A. That I don't know.
Q. Approximately how long?
A. It seems to me it was about 6 or 7 months.
Q. Then where did you go from there?
A. To Amco, down in North Chicago.
Q. How long did you work there?
A. Not very long. I don't know; it was just a couple of months.
Q. About 2 months?
A. That is all.
Q. Then where did you go from there?
A. Over to Fansteel.
Q. By the way, with reference to your last job before you came to Fansteel, did you leave that one voluntarily or were you discharged?
A. I think I was laid off down there.
1001 Q. You draw a distinction between a discharge and a lay-off, do you not?
A. I do.
Q. You were not asked to come back there, were you?
A. No.
Q. You were doing tool and machine shop work there?
A. Yes.
Q. Tool room work?
A. Yes.
Q. At the Fansteel plant you got acquainted with Vascoloy Ramet and cast alloy work, did you not?
A. Very little.
Q. You did some of it?
A. There was quite a little.
Q. And there was some graphite work in connection with those items?

A. Graphite is a powder or dust—
Q. Yes.
A. —not a metal.
Q. I know that. However, you use it.
A. I know that.
Q. You use it in connection with Vascoloy Ramet and cast alloy work, do you not?
A. Yes.
Q. That is not commonly used with respect to ordi-
1002 nary tool work, is it?
A. No.
Q. That is unusual?
A. Yes.
Q. You grew more proficient with those items as you worked along at Fansteel in the tool room, did you not?
A. What do you mean "proficient"?
Q. You mean, you do not understand the word?
A. That is right.
Q. Were you able to handle those materials better as the months wore on?
A. Oh, sure.
Q. Your experience was very helpful in that respect?
A. Yes, sir.
Q. And the difficulty you referred to between Johnstone and Haskell was in connection with graphite work, was it not?
A. Between who?
Q. Between Haskell and Johnstone, when Haskell was not satisfied with Johnstone and his work; that was in connection with some graphite job, was it not?
A. That is right.
Q. Is that graphite work an ordinary machinist's job?
A. Yes, sir. I would say so.
Q. You think that the average machinist in most plants can handle that very efficiently and effectively without
1003 any previous experience in graphite?
A. I do.
Q. Are you sure of that?
A. I would say so, yes.
Q. Tell me, in view of the fact you did not encounter it before you went to Fansteel, how you are so sure of that statement.
A. Whenever you place two pieces of metal together to make a perfect sphere, or a perfect square, or anything like that, as soon as it matches, that is all there is to it.

Q. Graphite is not a metal, you just told me a little while ago.

A. No.

Q. It is a powder.

A. Yes, sir.

Q. Matching metal has nothing to do with graphite. I am talking about graphite. The use of graphite is something the ordinary machinist is quite familiar with, is that right?

A. Well, I would not say so.

Q. I understood you to say so a few minutes ago. Let us get it straight.

You say now that the use of graphite is not an ordinary and usual job for a machinist, is that right?

A. (No answer.)

Q. As an expert, you do not have to take that long
1004 to tell me whether it is an ordinary part of his work or not. You know that, as part of your daily work. Let us have a more prompt answer.

A. Working on a machine, or working on graphite, would be the same as writing on a chip, or writing on a piece of paper.

Q. You do not think there is any difference. Am I to assume that, from your two answers, is correct now?

A. I can't answer you "yes" or "no." That is the reason I say—

Q. That is why you answered me "yes" and "no", is that right?

A. That is right.

Q. Did you say—by the way, was Johnstone an officer of Lodge 66?

A. No, sir.

Q. Was he a member of these committees?

A. No, sir.

Q. You have some interest in the outcome of this proceeding, have you not?

A. Only to be reinstated.

Q. Was your union membership known to the officers of the company, during the time you were employed by the Fansteel Metallurgical Corporation?

A. What was that?

Q. Was your union membership in Lodge 66 known?

A. I would say "yes."

1005 Q. You were never discharged or threatened with discharge by reason of that, were you, prior to February 17th, the evening of February 17th? February 17, 1937.

A. I was.
Q. You were?
A. Yes.
Q. Tell us the circumstances.
A. A foreman by the name of Groll threatened to replace me many times.
Q. Was one of the occasions when you were using a saw on a metal bar that required a considerable time to saw through?
A. (No answer.)
Q. Let me make it more specific, so you and I will understand each other, Mr. DuBois:
Do you remember the occasion when you started a 5 or 5½-inch cold rolled bar of steel through a saw in your department, and a discussion with your foreman ensued at that time?
Tell me whether or not you remember the occasion.
A. I remember the occasion, but there wasn't any 5 or 5½-inch diameter piece of cold rolled.
Q. What kind of a piece was it?
A. A 3-inch diameter piece of cold rolled.
Q. That takes some little time to saw through, does it not? It takes some little time for the saw to go through, does it not?
1006 A. Not long.
Q. How long would you say, as an expert?
A. I can't say.
Q. Well, if I were to suggest about 45 minutes to an hour, would you say that is about right?
A. That depends upon the pressure of the saw, the speed of the saw, and such as that.
Q. Well, how long would it take, bearing in mind all of the factors you had before you at that time?
A. Well, I couldn't say. I never timed it.
Q. You sat down to wait for the bar to go through the saw, and at that time Mr. Groll came along and criticized you for that, did he not?
A. I did.
Mr. Walsh: I object to that. I believe his testimony here was that the saw was run through the bar—
Mr. Swiren: I do not know how it works.
The witness, I assume, will correct me if that is a serious error.
Mr. Walsh: I am afraid it is serious.
Mr. Swiren: Are you an expert, too, by the way?

Mr. Walsh: No. I am just a lawyer.

Trial Examiner Dudley: I will overrule the objection. Proceed with the questioning.

Mr. Swiren: Read the question.

1007 (The question was read.)

A. I did.

Q. (By Mr. Swiren) He criticized you at that time?

A. He did.

Q. He told you that you ought to go about some other work while you were waiting for the bar to go through, did he not?

A. Yes, I think he did.

Q. That is one of the instances you have just referred to in your suggestions as to threats of discharge, is that right?

A. I just merely told him that I only run one machine at a time, and that I didn't have hands enough to run three or four.

Mr. Swiren: Read the question, Mr. Reporter.

(The question was read.)

A. I think so.

Q. (By Mr. Swiren) Are there any others that you can think of at the moment?

A. Yes, there was.

Q. Tell us the time. How many others can you think of?

A. There is just one I think of pretty distinctly.

Q. That is the one I have just referred to? That is the one I have just referred to, that you have described? Or is there another one?

A. There is another time.

Give us the approximate date.

Q. When was the other time?

1008 A. There was a time—do you want me to relate this?

Q. I want the approximate time, the approximate date.

A. I can't give you the date.

Q. Tell us approximately.

A. I have no idea.

Q. Well, you know whether it was in 1935, do you not?

A. (No answer.)

Q. Do you know whether it was in 1935 or not?

A. No. It wasn't in 1935.

Q. Do you know whether it was in 1936 or not?

A. I think it was sometime after the 14th of November 1936.

Q. What happened then?

A. Prior to the time Mr. Groll came into the picture, whenever there was a small job to be done, to improve the efficiency of the concern, we had always taken it, and taken the opportunity to do what we saw fit in order to help the rest of the fellows working in the plant, especially those that were working on piecework.

There happened to be a little fixture set in a die that stamped a point on two sides at the same time. There was a fellow by the name of Boley running the machine, and he said it didn't line up properly, and he asked me if I could do anything about it.

1009 I told him I would see, and I would do what I could. I thought perhaps it would take a couple minutes time, and I went ahead and did it. After getting the man back to work, he asked me to make a little guard in order to keep his fingers out of the punch press, so for safety's cause, I made that, and while I was making it, Mr. Groll bawled me out.

I told him, "Mr. Groll, I thought I was helping the plant, and helping you, and helping the efficiency of the man so he could make his money." Well, one thing led to another, which led to the encounter between Groll and I at the time of the hacksaw.

Q. You did not ask Mr. Groll's permission to do that job before you did it, did you?

A. Prior to that—

Q. Did you, or did you not ask his permission? Do not make a speech about it. Just give me an answer.

A. I didn't.

Q. All right. Are you a foreman in that plant, by the way? I mean, were you at that time?

A. I was not.

Q. Was it your duty to select the work to be done by you or the other men in that department? Was that your function?

A. It was not.

Q. All right. Tell us of any other incidents that you

1010 can recall with reference to these threats of discharge.

A. (No answer.)

Q. Were there any others?

A. Well, that is all of any importance, although it was pretty near an every day occurrence.

Q. You mean, you were not working in very close harmony with the foreman, is that your point? You were not getting along very well?

A. We were getting along all right as long as he would leave me alone.

Q. You were getting along all right as long as he was not giving you any instructions or supervision. I see.

Prior to the evening of February 17th, 1937, you were not discharged by the Fansteel Metallurgical Corporation, were you?

A. (No answer.)

Q. You had better speak up so the reporter can hear you.

A. No, sir, I wasn't.

Q. That evening, about six o'clock was the first time you got any information of any discharge since the time you began working for the company, is that right?

A. What evening is that?

Q. The evening of February 17th.

A. I never got no information to that effect at any time.

Q. You never heard about it?

1011 A. Well, as I told you before—

Q. You never heard, while you were in the buildings from the 17th of February to the 26th of February, 1937, that you had been discharged?

A. (No answer.)

Q. You had better speak up, because the reporter does not have two pairs of eyes.

A. As I told you before,—

Q. What is that?

A. As I told you before, I heard rumors. That is all I know. I never heard anybody tell me that.

Q. You told me that in another case. These gentlemen were not all present there, so you had better tell it again. They all do not have the same information that I have.

You heard rumors?

A. I heard rumors.

Q. You heard rumors while you were in the plant that you had been discharged the evening of February 17th, but you did not know definitely about it?

A. I didn't.

Q. You suspected those rumors were correct, did you not?

A. You hear rumors, and some you take for facts, and some you don't.

Q. Let us talk about this one. Did you take that one to be true?

1012 A. No, I didn't.

Q. You did not?

A. No.

Q. You were quite active in the work of Lodge 66, were you not?

A. Well, I attended quite a few meetings, but then I wasn't any more active than anybody else.

Q. Were you a member of the socalled bargaining committee?

A. At later stages, yes.

Q. Were you one of the members of that committee which met on the evening of February 16th, 1937, the night before the sit-down?

A. Why do you mean by "the committee that met"?

Mr. Walsh: I object to that, your Honor, unless it be shown that there was a committee that met.

Mr. Swiren: That has been shown by 14 witnesses so far.

Mr. Walsh: No, it has not. There was not anything mentioned about that.

Mr. Swiren: The evidence shows that there was a meeting of the bargaining committee on the evening before, February 16th.

Mr. Walsh: I do not recall that particular testimony.

Mr. Swiren: I am afraid that is the fault of your recollection, Mr. Walsh, and not the fault of the record.

Trial Examiner Dudley: Mr. Swiren, suppose you
1013 ask him in the customary manner if there were meetings, and what happened, and so forth.

Mr. Swiren: Of course, he could only know about that if he were there. That is why I went right to the meat of the thing.

Q. (By Mr. Swiren) Did you attend a meeting of the bargaining committee or any other committee or any other branch of Lodge 66 on the evening of February 16th?

A. I don't recall that I did. I don't remember the time. That is, I don't recall the time.

Q. Did you attend a meeting of the lodge about a week before the sit-down?

A. I did.

Q. Yes. Then did you attend a meeting of the bargaining committee subsequent to that date, before the group took possession of the buildings, buildings 3 and 5?

A. I did not.

Q. You did not attend it?

A. Not that I remember of.

Q. Well, were you ever informed that there was a meeting

on the evening of February 16th of the bargaining committee of Lodge 66?

A. I don't recall, no.

Q. Did you ever learn that you were designated by the bargaining committee to take charge of propaganda in
1014 connection with the proposed strike?

A. To take charge of propaganda?

Q. Yes.

A. I think there was something said about my being propagandist. I don't know what it was.

Q. There was something said about that?

A. Yes.

Q. Do you not remember just when that occurred, where, or who said it?

A. No, I don't remember when it was.

Q. Did you do anything in performance of your duties as propagandist?

A. No.

Q. You never discharged that responsibility, I take it?

A. No. There was a lot of propaganda, and gossip, and rumors, as I say. I don't know.

Q. You did not contribute to it?

A. No.

Q. I see. Then the following day, on the afternoon of February 17th, did you participate in a meeting of the so-called bargaining committee in the chemical building of the Fansteel plant?

A. I did.

Q. That was the meeting at which it was determined to take over buildings 3 and 5, is that right?

1015 A. I wouldn't say that, no.

Q. When you left that meeting, where did you go?

A. I went over and sat down by the machine.

Q. Where? In what building? In the Chemical building?

A. No; building 3.

Q. You went from the chemical building to building 3?

A. Yes.

Q. You sat down by your machine?

A. Yes.

Q. On a bench, or on a chair?

A. On a stool.

Q. A stool?

A. Yes.

Q. How long did you remain sitting on that stool?

A. Well, until after four o'clock.

Q. Did you talk to anybody while you were sitting on that stool?

A. Not that I remember; maybe yes, and maybe no. I don't remember.

Q. You just sat there, so far as you can recall?

A. I don't know.

Q. Were there other men about—

A. It was pretty exciting at that time.

Q. Were there other men about you at that time?

A. Come to think of it, I think we were upstairs. I
1016 think I went upstairs, and then downstairs. I don't know where I went.

Q. With the stool?

A. No, not all the time. Sometimes I would come back and sit down, and then get up and go. I don't know where I went.

Q. So you left your stool a few times during that period?

A. Yes.

Q. Did you do anything besides walk up and down? Did you say anything to anybody, or do anything?

A. It is possible.

Q. You do not have any recollection about it at the moment?

A. Not of any direct conversation.

Q. Did you not carry on your normal work while you were in that building, did you?

A. No, not at that time.

Q. By the way, you remained in the building day and night from February 17th to February 26th—

A. Yes.

Q. —1937?

A. Yes.

Q. You ate there and slept there, is that right?

A. Yes.

Q. What did you do after four o'clock on February 17th?

A. Probably the same thing as I did before four o'clock. I don't know what it was.

1017 Q. Give us your best recollection.

A. That I can't tell you.

Q. You did not teach anybody how to run machines, did you?

A. No.

Q. You were not conducting any classes as an expert machinist?

A. No, sir.

Q. Tell us what you did do?

A. Well, I don't know. I didn't do anything. I just hung around, that is all.

Q. Did you do anything but that all the time you were in the plant from the 17th to the 26th of February?

A. That is all I remember of now.

Q. You just hung around?

A. That is about all there was to it. We couldn't do much else, but we can eat and sleep.

Q. Were the normal operations of the plant being carried on in building 3 during that period?

A. No.

Q. None of the women that were ordinarily employed in that building were there, were they?

A. No, sir.

Q. Or the foremen?

A. No, sir.

Q. Between the time you left the chemical building 1018 and the time you went into building 3, did you go and consult with any member of the management or the company?

A. I did not.

Q. You did not go and ask permission to remain in building 3, did you?

A. No.

Q. You did not receive any such permission from the management or any officer of the company, did you?

A. No, sir.

Q. As I understand it, from the time you and the others took over building 3 and building 5, production in those buildings ceased, that is, from February 17th, 1937 at about two-thirty o'clock in the afternoon, until the morning of February 26th, 1937, when you left the buildings.

Is that right?

A. I didn't see anything in the way of operations, no.

Q. If there had been any material operations you would have seen them in that time, would you not?

A. I didn't see any, no.

Q. Is that right?

A. I didn't see any.

Q. I say, you would have seen any material operations of production going on, would you not?

A. I think so, yes.

Q. What were you engaged in during the period you
1019 stayed in the building, in building 3, from the 17th to the 26th of February?

A. What do you mean "engaged"?

Q. What were you doing there?

A. Why, we were there. They called it a sit-down strike, to protect your job.

Q. You were holding these buildings, were you not?

A. I beg your pardon?

Q. You were holding buildings 3 and 5?

A. I wouldn't say "holding them", no.

Q. You did not see the sheriff or any of his deputies there during that period, did you?

A. Oh, yes; lots of them.

Q. Did you hear any rumors to the effect that the sheriff was trying to get into the buildings and evict you and the others who were in the buildings?

A. I think so.

Q. You heard about that?

A. I heard rumors, yes.

Q. You saw the sheriff trying to get into the buildings, too, did you not?

A. No, sir, I didn't.

Q. Did you hear rumors about his trying to get into the buildings?

A. I did.

1020 Q. You saw that he did not succeed in getting in, did you not, at least as far as building 3 was concerned?

A. I heard that he didn't.

Q. You did not see him or his deputies come into the building?

A. No, I didn't.

Q. You did not see any officers or the attorneys for the company effect an entrance into the building, either, did you, during that period?

A. No—yes, I did. I saw a couple of them come in there.

Q. You saw Luther Henry and Whitey come in in the afternoon or evening of the 17th of February, is that right?

A. That is right.

Q. Did you see anybody come in after that date?

A. No. I don't think so.

Q. When the sheriff came to get into the buildings you went downstairs, took away the barricades and opened the doors so he could come in, is that right?

A. I wasn't around. I don't know.

Q. You did not do that, did you?

A. No.

Q. You did not see anybody do it?

A. No, sir.

Q. Did you ask anybody to do it?

A. No, sir.

1021 Q. But you were not trying to keep the sheriff or the company from taking possession of those buildings, were you?

A. I weren't what?

Mr. Swiren: Read the question.

(The question was read.)

Q. (By Mr. Swiren.) You and the other men in the building, I am referring to.

A. I was inside; that is about all I can say.

Q. Is that the best answer you can give to that question?

A. Well, we didn't want—I would like to have you ask me that question again.

Mr. Swiren: Read it again, please, Mr. Reporter.

(The question was read.)

A. No; I wasn't trying to keep them from taking possession.

Q. (By Mr. Swiren.) You and your associates in the building did not care whether they came in or not, did you?

A. Oh, yes.

Q. You did?

A. Sure.

Q. Your desire was to have them come in, or not to have them come in, or which?

A. We didn't think it proper for them to be in at that time.

Q. You thought it was proper to keep them out at that time?

A. Until our union was recognized.

Q. Yes.

1022 A. Yes.

Q. By the way, did anybody advise you that was proper?

A. No.
Q. You just formed that judgment yourself personally?
A. That is just my opinion, yes.
Q. You did not discuss that idea, or that thought with anybody else in the building, did you?
A. Not that I remember of.
Q. That was only your personal idea. You do not know what ideas the others entertained in the building, do you?
A. No, sir.
Q. I take it that the entrance of gas into the building, thrown in by the sheriff's deputies on the morning of the 19th, convinced you that the sheriff wanted you out of there, did it not?
A. I think so, yes.
Q. That was a little stronger than the rumors you had heard?
A. Yes.
Q. Did you leave when that information came to your mind?
A. I did not.
Q. You stayed on?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
1023 (Witness excused.)
Mr. Walsh: If the Examiner please, I suggest we adjourn at this time.
Trial Examiner Dudley: Very well. We will adjourn at this time until nine-thirty tomorrow morning.
(At 4:45 o'clock p. m., June 14th. 1937, and adjournment was taken until Tuesday, June 15th, 1937, at 9:30 o'clock a. m.)

1027 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Tuesday, June 15, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of N. A.

1028 PROCEEDINGS.

Trial Examiner Dudley: Let the record show that the hearing is reconvened at this time.

Mr. Keele: May the record show, if the Examiner please, that it is stipulated and agreed by and between counsel for respective parties hereto, that cross examination of witnesses on matters not covered by the direct examination may be reserved until a later time; and that counsel for the Board, Mr. Walsh, will produce such witnesses whom he has examined in chief, for further cross examination upon the request of counsel for the respondent.

Mr. Walsh: Yes.

Mr. Keele: Thank you.

Trial Examiner Dudley: That agreement is quite satisfactory to the Examiner.

Mr. Walsh: Mr. Fagan. This witness has not been sworn, your Honor.

THOMAS E. FAGAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Will you state your full name, please.
A. Thomas E. Fagan.
Q. Where do you live?
A. Waukegan, Illinois.
1029 Q. Are you employed by the Fansteel Metallurgical Corporation?
A. I was.
Q. When were you first employed there?
A. In June, 1917.
Q. And you have been employed there ever since?
A. (Nodding head "Yes.")
Mr. Walsh: You will have to speak out loud, Mr. Fagan, so that the reporter can hear you.
A. Yes.
Q. (By Mr. Walsh.) What is your job down there?
A. Well, the last time I worked there, I was a contact cutter, but I was pushed around through the whole department, and any times that fellows would be off, I would be run in on their jobs.
Mr. Collins: Mr. Fagan, you were subpoenaed to appear here this morning, were you?
The Witness: Yes.
Mr. Collins: Do you wish to claim your privilege under Section 11 Sub-section 3 of the United States Labor Relations Act? Do you want to claim your privilege against self-incrimination?
The Witness: Yes.
Mr. Kelle: Your Honor, may the record show that counsel for the witness, Mr. Collins, has just examined him.
1030 Trial Examiner Dudley: Yes. Mr. Collins' appearance was entered yesterday, Mr. Reporter. The privilege is granted the witness.
Q. (By Mr. Walsh.) Mr. Fagan, on or about September 10th, while you were working in the shop, did you have some talk with Mr. Anselm?
A. I did.
Q. I will ask you to tell the Examiner just what Mr. Anselm said to you, and what you said to Mr. Anselm.

A. Well, shortly after dinner, on September 10th, Mr. Anselm come into the cutting room and signaled me out, and called me up to the foreman's desk; and he had our contract that the boys presented to the office, and he also had another paper that he was getting signatures on.

Q. Do you know what that paper was?

A. Well, I couldn't specify exactly, but it was something for making up a different union.

Q. All right. Go ahead.

A. And he said, "Earl, did you read this contract?" I said, "Yes." Then he says, "Just read it over." I read it over; I sat right up on Bill Chiswell's desk—that was our foreman—and I read it over; and I says, "There is no court in the land wouldn't hold us to this if we put our signatures on it." And he started telling me about the C. I. O.; and that if I would quit, in a couple of years time it would be
1031 forgotten. I took my billfold out of my pocket, and he saw my orange card.

Q. What was your orange card?

A. My union card.

Q. Yes?

A. And I said, "I couldn't do that. But I am only one out of seven men in here."

Q. Referring to your department?

A. Referring to my department; there was seven of us cutting on that day.

Q. Yes.

A. I said, "Call them all up here; take us over to the office, and talk. I am not running this thing. I have not got nothing to do with it, only that I am a member." "No", he says, "I will tell you; I have lost a lot of time this morning." He says, "I will give each of you five minutes apiece." He says, "I want to break this thing up."

Q. Referring to what?

A. To the union, to the C. I. O.

Q. Yes.

A. (Continuing.) And he says, "I will give you five minutes apiece." So he called Clarence Dreyer next, and I went back to my machine and sat down and went to work. Then in the meantime, as I seen it, Clarence Dreyer called Ted Daluga up, and their conversation I didn't hear.

1032 Mr. Walsh: All right. You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) What did you say your name was?
A. Thomas Fagan; Thomas E. Fagan.
Q. You are not working for the company at the present time—the Fansteel Company, are you?
A. (No answer.)
Q. You know, do you not?
A. I am not down there.
Q. You have not been drawing any pay?
A. No, not from Fansteel.
Q. Where are you working?
A. For the State of Illinois at the present time.
Q. In what capacity?
A. Division of Highways.
Q. How long have you been working for them?
A. Three weeks.
Q. How long did you work for Fansteel?
A. I started to work for Fansteel in 1917, in June.
Q. You had known Mr. Anselm a long time, at the time of the conversation that you have referred to, had you not?
A. What is that?
Q. I say you had known Mr. Anselm a good many years, at the time of the conversation you have referred to, had you not?
1033 A. Quite a few years.
Q. Well, he had been there for a good many years, had he not?
A. Yes.
Q. Yes; and you had been there for a good many years.
A. Yes.
Q. And he had been plant superintendent for a long time, had he not?
A. Yes, sir.
Q. And he had just returned, had he not?
A. Yes, sir.
Q. He had gotten back two days before the time you talked to him?
A. Yes, sir.
Q. And this is the first time that you had seen him since his return?
A. No.
Q. When had you seen him before?
A. He had come in and shook hands with all of us.

Q. One by one?
A. You bet.
Q. When was that?
A. Well, I don't recall the date.
Q. Can you fix the date when he returned, and shook hands with all of you?
A. No.
1034 Q. How do you fix this date of September 10th?
A. Well, it just happened to be a point that I kept in mind.
Q. You just remember that it happened on September 10th?
A. Yes.
Q. What happened on the 9th, that you can tell us,—the 9th of September?
A. I don't recall.
Q. What happened on the 8th?
A. I don't recall that.
Q. What happened on the 11th?
A. I don't recall that.
Q. Or the 12th?
A. (No answer.)
Q. What is the answer?
A. I don't recall.
Q. What day of the week was the 10th?
A. I don't recall that.
Q. What else occurred on the 10th, besides your conversation with Mr. Anselm?
A. That is all that I know of.
Q. Where did you go that evening, after you quit work?
A. Where did I go?
Q. Yes, sir.
A. I don't know that.
Q. How is it that you can remember this one in-
1035 stance so well, and fix the date, and yet you cannot tell us anything that occurred on the 8th, 9th, 11th or 12th, or where you went that evening, and yet you can remember this?
A. (No answer.)
Q. Will you answer the question.
A. What is the question?
Mr. Keele: Read the question to the witness, please, Mr. Reporter.
(The question was read.)

A. Well, I will answer that question this way; from the treatment that we had been getting down there, when something like that occurred, I thought it was good to keep that in my mind, that certain date.

Q. (By Mr. Keele.) You were building that, against the time when you were going to testify against the company, was that it?

Mr. Walsh: I object.

A. I didn't have any—

Mr. Walsh: Just a moment. I object to that, if the Examiner please.

Q. (By Mr. Keele.) Well, you had it in mind, did you not?

Mr. Walsh: That is merely a conclusion, in the mind of counsel. There is nothing in the evidence to show that any proceedings were started, or charged before the National Labor Relations Board, at the time this occurrence took place.

1036 Trial Examiner Dudley: The objection is overruled. There was a complaint filed in September of 1936.

Mr. Walsh: I move to strike out the question and answer.

Trial Examiner Dudley: Denied.

Q. (By Mr. Keele.) What was the treatment that you say you had received, that you say was such that it made this incident stick in your mind, and this date, and you thought it was the thing to do to remember it?

A. Well, when I was making $6.50,—or, I will say $6.00 per day around there, and they come in and cut me down to 50 cents per hour, after working there all your working days, why—

Q. Cut you down from $6.00 to $4.00; is that right?

A. I won't say—I worked piecework

Q. Yes?

A. I was making $6.00, $6.50, $6.70, and some days less; but they came in and cut me down to 50 cents per hour, and they told me I had a job there.

Q. Did you not know that you had a job before that?

A. Well—

Q. Was that news to you?

A. That 50 cents per hour was news to me, when they came in and told us, "You haven't got any ace in the hole anymore."

Q. What did they mean by saying that you did not have any ace in the hole anymore?

1037 A. I don't know what they did mean by that.

Q. Who said that to you, if you can recall?
A. One of the efficiency men.
Q. One of the officials?
A. One of the efficiency men.
Q. Oh, one of the efficiency men.
A. Yes, sir.
Q. When was it he said that to you?
A. I don't remember.
Q. What date was that exactly?
A. I don't remember the date.
Q. Well, was that not as important to you, as this statement of Mr. Anselm?
A. (No answer.)
Q. Yes or no.
A. Why, I don't know.
Q. But you cannot remember the date of that, can you?
A. No.
Q. All right. Now, what else was there; what other treatment did you get that was of such a nature that it made you feel that you ought to remember this conversation with Mr. Anselm?
A. I don't recall any other right now.
Q. You do not recall?
A. No.
1038 Q. All right. About what hour of the day was it that this conversation took place?
A. I don't recall that; there were so many times, quite a few different times, that we talked to Luther Henry, and this efficiency man.
Q. Well, you have got the dates, those dates in mind, have you not?
A. No, I haven't.
Q. The only date that you can remember, of any of your conversations, was September the 10th?
A. That is all.
Q. Is that correct?
A. Yes, sir.
Q. Was there anything particularly significant, or was there any particular reason why you could remember that date, and that date only, of all your conversations?
A. (No answer.)
Q. Can you answer the question?
A. What is the question?
Mr. Keele: Read it, please.

(The question was read.)
A. No.
Q. (By Mr. Keele.) Did you make a note of it?
A. No.
Q. You did not write it down anywhere?
1039 A. No.
Q. Did you talk with anyone about is?
A. No.
Q. About remembering the date?
A. No.
Q. At the time, I mean?
A. (No answer.)
Q. You talked to Mr. Walsh about it, did you not?
A. Yes.
Q. How did you fix that date when you were talking to Mr. Walsh about it?
A. I didn't fix any date.
Q. Well, did you give him the date?
A. Yes.
Q. When this conversation occurred?
A. Yes.
Q. Well then, how did you determine what date it was, at that time? Did he ask you whether you remembered that date, or whether you were sure of that date?
A. He asked me what date it was.
Q. Yes.
A. And I told him.
Q. Without any trouble, or any reference to any notes, or anything, you just remembered that it was September 10th, did you?
1040 A. Yes, sir.
Q. Now, you say you had a lot of other conversations with Luther Henry, and other officials?
A. No, I didn't say, with other officials.
Q. Well, who else was it, did you say?
A. I never had any conversation with anybody at all; it was always our group.
Q. And about what were those conversations, that you are referring to?
A. Well, just arguing over piece rates, and the standards they had there.
Q. Can you give us the dates of any of those conversation?
A. No.

Q. You can only remember the date of just this one conversation?
A. That is all.
Q. And you cannot remember what hour of the day it was?
A. No, I can't.
Q. Now, where did it take place?
A. Do you mean, now, the conversation that Mr. Anselm and I had?
Q. Yes.
A. That was shortly after dinner.
Q. Shortly after dinner.
A. Yes, sir.
1041 Q. Now, where did it take place?
A. Right in the cutting room.
Q. All right. Now, how many men were working there in the cutting room at the time?
A. 7.
Q. And you told him that there were 7 men there at the time—
A. Yes.
Q. —did you not?
A. Yes, sir.
Q. And where in the cutting room did the conversation take place? At the boss' desk, is that correct?
A. Yes.
Q. The foreman's desk?
A. Yes, sir.
Q. Chiswell.
A. Yes.
Q. Where was Chiswell?
A. I don't know.
Q. Was he not at his desk?
A. No.
Q. He was somewhere in the department there, was he not?
A. I don't know.
Q. You don't know that?
A. Chiswell was not in the department. I don't know where he was.
1042 Q. He was not in the department at all at the time, was he?
A. No.
Q. And how far were the other men from where you were, —the nearest man to this conversation?
A. The nearest man?

Q. Yes.
A. Oh, well, I should say from about here, to that man there. (Indicating.) That was the closest man.
Q. The closest man.
A. I judge that.
Q. Who was that?
A. (No answer.)
Q. Do you not remember?
A. No, I don't remember who it was.
Q. Why, you remember each man there, and just where his place was, do you not,—each man who worked there? Can you not tell us that?
A. No, I don't recall about that.
Q. You can recall that date, but you cannot recall who the man was who occupied the nearest work-bench?
A. I will say that it was Harold Dreyer who was running that closest machine.
Q. Are you sure of that?
A. I won't say that I am sure, no.
Q. All right. Who was the next man, the next closest 1043 man, and how far away was he?
A. Ed Schuman.
Q. How far away was he?
A. Oh—
Q. About how far?
A. Oh, there isn't much difference in the first and second machines.
Q. About the same.
A. Yes.
Q. All right. And who was the next closest man to you, after those two men?
A. Harold Dreyer.
Q. Who?
A. Or rather, Clarence Dreyer.
Q. All right. And who else, then, in their order?
A. Ted Daluga.
Q. How far away was that man?
A. Well, he is down on the end—his machine was down on the end, I would say approximately—
Q. Between 20 and 30 feet?
A. 15 or 20 feet.
Q. 15 or 20 feet?
A. I would say that, approximately.
Q. All right. Now, was there a great deal of noise in the room, in the cutting room?

1044 A. Not so much; we can all understand each other.

Q. You can?

A. Without yelling.

Q. All right. Then, of course, whatever was being said to you could be heard; whatever was being said to you by Mr. Anselm could be heard by the other men, could it?

A. I don't know that.

Q. Well, in what tone of voice did he speak?

A. Well, he just spoke like—we were just talking like—

Q. Like you and I are?

A. Natural conversation.

Q. Like you and I are, do you mean?

A. Well, I don't know; I didn't holler at him.

Q. Did he talk to you standing up close, whispering in your ear?

A. No.

Q. Did he put his arm around your shoulder?

A. No.

Q. There was nothing confidential about it, then, in his manner, was there?

A. No.

Q. There was not attempt on his part, so far as you could see, to keep the other men from hearing what he was saying, was there?

A. (No answer.)

1045 Q. Was there?

A. I couldn't answer that question, because I don't know.

Q. Well, do you recall anything that he did, that made you feel or made you believe at the time that he did not want anyone else to hear it except you?

A. Well, he wouldn't call us all together; he didn't want to talk to the seven of us together.

Q. He said he was going to give you five minutes apiece, five minutes to each man?

A. He said he was going to give five minutes to each man, but he didn't.

Q. He did not give five minutes to each man?

A. No.

Q. How long did he give you, in his talk; about how much time did he give you?

A. Oh, I don't know. I never kept—

Q. Well, would you say two minutes?

A. Oh, something like that, or maybe—

Q. Five minutes?
A. About that.
Q. How?
A. Yes. I imagine it might have been about five minutes.
Q. All right. Now, how long did he talk to Dreyer?
A. I don't know.
Q. Well, you saw him call Dreyer there, did you not?
1046 A. Yes.
Q. And it was right in the department there?
A. Yes.
Q. You were only 15 or 20 feet away, while he talked to Dreyer, were you not?
A. Yes.
Q. And you do not recall whether he barely spoke to him, or whether he kept him there three or four or five minutes?
A. They had a conversation—
Q. Yes, but about how long; as long as he had talked with you?
A. Longer.
Q. Longer?
A. Yes, sir.
Q. It took him longer than five minutes?
A. Talking to Dreyer and Ted Daluga.
Q. Together?
A. Yes, sir.
Q. All right. Now, could you hear what they were saying?
A. No, sir.
Q. Did you try to?
A. No.
Q. How far away were you?
A. 15 or 20 feet.
Q. All right. Now, how close to them was the man
1047 nearest you?
A. Well, I would say—that was Ed Schuman, and Clarence Dreyer—or rather, Harold Dreyer, and—
Q. How far away were they?
A. I told you before, about the distance from here to that man over there. (Indicating.)
Q. All right.
A. Maybe not quite that far.
Q. In other words, Mr. Anselm talked to Dreyer and Daluga at the same point in the shop where he talked to you, did he?
A. He talked to Harold Dreyer, and Harold called Ted

Daluga over there to verify some statement, but what it was I don't know.

Q. All right. Now, will you just tell us again what it was that Mr. Anselm said to you.

A. The whole story?

Q. Yes.

A. Well, he comes in there, and looked over at my machine, and said, "Come here, Earl."

Q. He called you by name?

A. Yes, sir.

Q. All right. He said, "Come here, Earl," and then what else did he say?

A. Well, he had that contract in his hand, and he asked me if I had read it, and I told him I had.

1048 Q. Now, what contract was that?

A. That was the C. I. O. contract, or the collective bargaining contract that the boys had drawn up, the way I understand it, and presented over to the office, and which was refused.

Q. When was it that they had presented it?

A. I don't know what date it was presented.

Q. You do not know what date it was presented?

A. No.

Q. You do not remember that date?

A. No.

Q. You knew that it was presented when it was presented, though, did you not?

A. Yes, sure, but the date I don't know.

Q. Well, as a matter of fact that had been presented a week before that, had it not?

A. I don't know.

Q. You do not know that?

A. No, sir.

Q. Did you know that it had been presented, that morning?

A. That morning?

Q. Yes.

A. I don't recall.

Q. You did not think that was important to you?

A. (No answer.)

1049 Q. Well, did you or did you not think that was important to you?

A. Yes.

Q. Did you not think that was as important to you, as this conversation you say you had with Anselm?

A. Yes.

Q. In fact that was the matter which was discussed with Anselm, was it not?

A. I guess so.

Q. But still you do not remember when that was presented?

A. No, I don't—not the date.

Q. All right. Now, what did he say about that contract?

A. He asked me if I had read it, and I said yes, that I read it over. He said, "I will give you even a better contract than that."

Q. Well, what did you say to that; that you did not care for it?

A. I didn't say I didn't care for it.

Q. Well, what did you say?

A. Well, we talked about the C. I. O. then.

Q. Well, did you say that you would be glad to have a better contract?

A. No, I didn't.

Q. Did you not want a better contract, if you could get it?

A. Oh, I imagine anybody would want something
1050 better, if they could get it.

Q. Did you tell him so?

A. No, I didn't.

Q. You just went right on to the C. I. O.

A. Sure.

Q. Who led up to the C. I. O.; Anselm, or you?

A. What is that?

Q. Who started the discussion about the C. I. O.; did you, or Anselm?

A. He told me he wanted to break the thing up.

Q. He told you he wanted to break the thing up?

A. Yes, sir.

Q. Well, just what did he say? As near as you can remember, what were his exact words, or as nearly his exact words as you can recall them?

A. "Oh," he said, "I want to break this thing up."

Q. What did he mean by "this thing"?

A. The union.

Q. How do you know he meant the union?

A. Because I showed him my union card.

Q. What made you do that?

A. Well, he told me—or rather I told him that if I quit, or anything like that, I would be blackballed, if the union went through; and I wouldn't be a traitor, or anything like that.

1051 Q. You said you would be blackballed?
A. Yes.
Q. By whom?
A. Well—
Q. What?
A. By the whole world, I suppose.
Q. Oh, I see. Have you got the impression that the whole world belongs to the C. I. O.; is that it?
A. No, I haven't got that impression.
Q. Well now, you say that you pulled out your card.
A. Yes.
Q. To show Anselm that you were a member?
A. Yes, sir.
Q. Had he started talking about the C. I. O. at that time?
A. Yes, sir.
Q. He had?
A. Yes, sir, he told me that in a couple of years time, it would be forgotten, and it would never hurt me if I quit it.
Q. How did he know that you were a member?
A. Why—
Q. Did he say how he knew you were a member?
A. He didn't say how he knew it, no, sir.
Q. Well, did he say to you that he knew you were a member?
A. No. He didn't say that. He knew I was after I showed him my card.
1052 Q. Oh, but he had gone on and talked about your withdrawing from the C. I. O. before that time, had he not?
A. (No answer.)
Q. What?
A. Yes, sir.
Q. And you had said nothing about being a member at that time, had you?
A. No.
Q. You were not an officer in the lodge, were you—
A. No.
Q. Lodge 66?
A. No.
Q. Did he say why he singled you out?
A. No, he didn't.
Q. Did you ask him?
A. No.
Q. Well, you said to him, "Wait a minute: I am only one of seven," did you not?

A. Yes.
Q. Did you say to him, "Why do you come to me?"
A. No, I didn't. I just told him that we had no—that I was just one of seven men, that I wasn't an officer, and no boss or nothing over it.
Q. Were there only seven men in the C. I. O.?
A. There were seven men in my department.
1053 Q. And they were all members of the C. I. O., were they?
A. Yes, sir.
Q. Well, there were a lot more members than that, of the C. I. O., in Lodge 66 at that time, were there not?
A. Yes, sir.
Q. Well, what did he say then; that he wanted to break it up?
A. Yes, sir.
Q. And in two years there would not be anything to it?
A. He said that in a couple of years time it would be all forgotten.
Q. And then you said what to him?
A. I said, "Now, you go ahead and call the whole gang up here." That is just what I said.
Q. Then what did he say?
A. Well, he said that he had something to do over in the office, and that he had lost a lot of time already, and he couldn't afford to waste any more, and he would give us five minutes apiece, give the rest of the boys five minutes apiece.
Q. And that he would sooner do that, rather than give five minutes to the whole seven at one time?
A. I don't know.
Q. Is that what he meant?
A. I don't know.
Q. Well, you suggested that he talk with you all at
1054 one time, did you not?
A. Yes, sir. I didn't want to be singled out.
Q. But he said that he had wasted a lot of time already that morning?
A. Yes.
Q. So he would give you five minutes apiece?
A. That is what he said.
Q. That would make 35 minutes, would it not?
A. (No answer.)
Q. Did he tell you what he had been wasting time on that morning?

A. No.
Q. All right. Now, what other conversation was there?
A. That is all. Then I went and sat down, and went to work.
Q. Did he tell you, "All right; go back to work"?
A. No, sir, he didn't tell me anything. I just walked back myself.
Q. You just walked away and left?
A. No; after he called Clarence Dreyer up there, I walked back to the machine.
Q. Did he tell you to stay there while he talked to Dreyer?
A. No.
Q. Did he tell you to go along about your business?
A. No, sir.
Q. Well, what was the signal, or what caused you
1055 to move away?
A. I just moved away.
Q. And you did not pay any attention to what was going on?
A. He said he was going to give each of the men five minutes apiece, and five minutes for each man meant that I didn't figure I should have my nose stuck in there.
Q. So that when he called Dreyer up there, you moved away?
A. Certainly.
Q. Did you talk to Dreyer about this afterward, after you saw him talk with Anselm?
A. Yes, we talked together.
Q. Where did that take place?
A. Well, that I don't know.
Q. Did you ever have any further conversation with Mr. Anselm about this matter of the C. I. O.?
Mr. Walsh: I thought we had agreed not to go into matters of that kind.
Mr. Keele: Well, that is true, but I just want to tie it up: I think it ties in with this other point.
Mr. Walsh: All right.
Mr. Keele: I am not going to pursue it at any length. Will you answer the question?
A. What is the question?
Mr. Keele: Read it.
(The question was read.)
1056 A. No, I don't think I had, that I can remember.
Q. (By Mr. Keele.) You never discussed it with him again?

A. I don't think so.
Q. And you never discussed it with him before either, did you?
A. No, sir.
Q. When did you discuss with Dreyer your conversation, that you had with Anselm?
A. Oh, I don't know. We talked—
Q. On that day?
A. Oh, I imagine that there was a few words said in the room after that, yes.
Q. Well, do you recall what that conversation was?
A. No, I don't.
Q. Well, was there not some discussion among the men there as to Mr. Anselm's visit to that department, and his conversation with you, and his conversation with Dreyer, and his conversation with Daluga? Was there not some conversation about that later on in the day among the men?
A. I imagine that there was some talk back and forth, a few words now and then.
Q. Well—
A. But I don't remember.
Q. Did not Dreyer ask you what he had said to you—what Anselm had said to you?
1057 A. Sure.
Q. Did you tell him?
A. Yes, I told him.
Q. Which one of the Dreyer's was that?
A. I told Clarence and Harold both.
Q. I see. Were they both in your department?
A. Yes, sir.
Q. And they told you what Anselm had said to them, did they?
A. Some of it, but I forget.
Q. What did they tell you that Anselm had said—
A. I don't know.
Q. Just a moment. What did they tell you that Anselm had said to them?
A. (No answer.)
Q. Can you answer the question?
A. I don't recall just what it was.
Q. You cannot recall that?
A. No.
Q. You continued to work for the company after that conversation, did you not?

A. Yes.
Q. On up until February the 17th?
A. Yes—I didn't work on the 17th.
Q. Well, up until that time. You were at work on the 16th of February, were you?
1058 A. Yes, sir.
Q. You were not discharged up until that time, from the 10th of September to the 16th of February, were you?
A. (No answer.)
Q. You were not discharged, I say.
A. No.
Q. All right. And no threats were made to you, that you would be discharged because of your union membership, were there?
A. Not to me.
Q. No. And there were not to anybody else there either, that you know of, were there?
A. I don't know.
Q. You did not hear of any, did you?
A. No.
Q. And you were not discharged on the 16th, were you?
A. No.
Mr. Keele: That is all.
Trial Examiner Dudley: Is that all?
Mr. Keele: That is all of the cross examination, Mr. Walsh.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Clarence Dreyer. This witness has al-
1059 ready been sworn, your Honor.

CLARENCE DREYER, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Dreyer, I will ask you whether you had a talk with Mr. Anselm in the cutting department about September 10th, 1936?
A. Yes, sir.
Q. Will you relate what that conversation was, between yourself and Mr. Anselm at that time and place?

A. Well—

Q. Just tell it in your own words.

A. Well, Mr. Anselm came over in the department that afternoon, right after dinner; and I remember his calling Mr. Fagan over there to talk to him; and then—

Q. Did you hear what he and Mr. Fagan had to say?

A. No, I couldn't hear what was said. That was a private conversation.

Q. Was there too much noise?

A. There is enough noise in there so that if you want to hear, you have got to talk up.

Q. Go ahead.

A. Then after he talked to Mr. Fagan, he called Ted Daluga up there, to talk to him. I was in on that conver-
1060 sation, but Daluga was there first; he called him first

Q. Yes?

A. What they said—what they had to say, I don't know, but during the course of their discussion, why, Ted Daluga called me up there to verify something that had been said.

Q. Do you recall what it was?

A. The discussion at that time was whether he could drop his union membership, and sign some kind of petition that Mr. Anselm said he had. I just don't recall what the petition was, but I imagine it was on this plan that they had sent us through the foreman. The discussion was about signing that petition, and Mr. Daluga told him that he couldn't do it; that he had already took the oath of membership in the union, and he couldn't belong to any company union; part of his oath was that he couldn't belong to any company union; and he called me up there to verify that statement. Well, we talked to Mr. Anselm about that, and we said we couldn't do that, and he couldn't see why, and we tried to explain to him in the best way we could.

Then he said, well, he wasn't going to bother talking to any of the rest of the boys; that he would be back later with the petition. We told him that if he could get a majority of the employees' names on that petition, we would sign along with them; that we would do what the majority done; and he said, well, he wouldn't bother talking to any of the rest
1061 of the fellows, but he would be back later in the day with the petition.

That is all that I remember, that was said; and he didn't come back no more with any petition.

Q. That petition related to what?

A. Well, it was—as near as I can understand it, it was a petition to agree to sign up with this agreement that the company had sent over that day, supposed to be drawn up from the employees representation plan, the typewritten copy that we received through our foreman in an inter-office correspondence envelope.

Q. I hand you what has been marked Board's Exhibit No. 15, and ask you if that is what you have reference to, when you refer to a typewritten memorandum that came in an inter-office communication envelope?

A. Yes, sir, this is the one.

Q. And that is the plan of employee representation, is that right?

A. Yes, sir.

Q. All right. Did he say anything about your union?

A. Well, the only thing that was said about our union was, withdrawing from it, and signing this petition that he had. That is the only discussion. That is where I came in, on the discussion he was having with Mr. Daluga.

Mr. Walsh: You may inquire.

1062 *Cross-Examination.*

Q. (By Mr. Keele.) Mr. Dreyer, you say you saw that petition that was handed to you?

A. Yes, sir.

Mr. Keele: Is that here?

Mr. Walsh: That is the plan they received.

Mr. Keele: How?

Mr. Walsh: That is the plan they received.

Q. (By Mr. Keele.) You say you saw this plan—

A. Yes.

Mr. Keele: Exhibit—

Mr. Walsh: 15.

Mr. Keele: 15?

Mr. Walsh: Yes.

Q. (By Mr. Keele.) You say you saw this plan that day; is that right?

A. No, sir, I didn't say I seen it that day. I said that the discussion was about that plan that we had received from our foreman.

Q. And you had already received this plan from your foreman at the time of this discussion that you have been talking about; is that correct?

A. Not this one, no, but we seen—this is the one he was talking about, when he had that petition; but we had that understanding, because I was in the office when we
1063 took—when he offered us a copy of that Wire Mill plan that they had.

Q. Well now, let us get this straight, Mr. Dreyer. Did I not just understand you to say that you had then received a copy of this employees representation plan from your foreman in an inter-office communication envelope?

A. We had.

Q. All right.

A. That is right.

Q. And that had happened at the time of this conference?

A. I don't know just exactly the date that we got that, but—

Q. Before, or after?

A. It was just about the time we got that, through the office.

Q. All right, but was it before or after you received this plan from your foreman, that this conversation took place?

A. Before or after?

Q. Yes.

A. I don't remember.

Q. Well, you had already received it at the time you had your conversation, had you not?

A. I don't remember if all of us had received it or not.

Q. Well—

A (Continuing.) I received one in the office, when I was up there on that committee.

1064 Q. Yes. All right. Now, at the time when Anselm was talking with Daluga, and yourself, and also with Fagan, did he talk with them about the contents of that employees representation plan?

A. I don't know what he talked to them about.

Q. What is the answer?

A. I say I don't know what he talked to them about.

Q. You do not know what he was talking with them about?

A. I don't know what he said to Mr. Fagan, or to Mr. Daluga.

Q. Fagan told you later, did he not?

A. I don't remember. All I know is what I heard when I come in on that discussion.

Q. Well now, wait a moment. Let us get this straight.

What did you hear when you came in on the discussion between Daluga and Anselm?

A. The discussion, at the time when I come into it, was as to whether Daluga could withdraw from his union membership, and sign that petition.

Q. What did the petition say?

A. The petition didn't say nothing; it didn't have nothing on it yet.

Q. All right.

A. No names, that is.

Q. Well, what was the petition for?

A. About signing up into a plan that Mr. Anselm
1065 had mentioned to us.

Q. An employees representation plan?

A. Something on the order of the Wire Mill plan; and he said he could make it even better; he said it would be practically the same as the Employees Plan from the wire mill; but it would be practically on the same order.

Q. And had the employees received copies of that plan at that time?

A. They had seen the ones that we brought from the office in book form.

Q. There were two of those, were there not?

A. No—

Q. Just two copies?

A. No, sir, there were more than two.

Q. All right. How many copies were there?

A. I don't remember how many there were, but there was more than two.

Q. Well, how many? If you know that there were more than two, how many were there?

A. Well, each member of the committee that went to the office, received one, and some of them got two, and maybe some of them three copies.

Q. As a matter of fact, they asked for them, and some of them asked for three or four, did they not?

A. Who?

1066 Q. The members of the committee, when they went to the office that morning?

A. No.

Q. They did not ask for any?

A. Not that I recall.

Q. They were just handed to them?

A. Yes, sir.

Q. And they took them, and just went right on out; is that right?

A. Yes, sir. Somebody brought them in, and gave them to Anselm while we were having that meeting; about the middle of the meeting somebody brought them into the office, and Mr. Anselm gave them to us before we left.

Q. And they brought in what, 15 or 20 copies, would you say?

A. No, sir, I wouldn't say that there was that many.

Q. Well, 10? You said some of them had two.

A. I can't say exactly how many there was, but I know that there was more than what there was on the committee.

Q. Did you and the members of the committee distribute those?

A. We took them—Mr. Anselm told us to take them around to the employees, and see what they thought of it, and naturally anybody who had a chance, read up on it.

Q. I see. All right. Now, when was this conversation with Mr. Anselm, and yourself, and Daluga?

1067 A. I am sure that it was right after dinner, shortly after dinner, and I am pretty sure it was on the 10th, I wouldn't say for sure, though, but as near as I can recall it was on the 10th.

Q. The afternoon of the same day that you had been in the office?

A. Yes.

Q. And—

A. (Continuing.) I am not sure of the date, but as near as I can recall, it was the 10th.

Q. And each of the committee members had received one or more copies of the employee representation plan?

A. Yes.

Q. And then that very day Mr. Anselm had come around with a petition to the men in the factory, asking them to sign up, and join up in an employee representation plan—on the same day; is that correct?

A. He never mentioned this employee representation plan. He had a petition there, to sign up.

Q. The petition—

A. (Continuing.) And there was no other thing that he would sign up—or that he would want us to sign a petition for, unless it was the plan that he had offered us while we were in the office.

Q. The petition was typewritten, was it not?

1068 A. Well—

Q. Except for the places to sign?

A. There was something on the top of it; as near as I recall, there was something on the top, but I don't know what it was.

Q. What did it say?

A I don't know; I didn't read it.

Q. You do not know then what the purpose of that petition was, do you?

A. Well—

Q. You are only saying what it must have been?

A. I know, because he asked us if—he asked Mr. Daluga why he couldn't withdraw from his union membership and sign that petition. Well, what would that mean?

Q. I do not know. That is what I want to know. Do you know what it meant?

A. There is only one thing that it could mean.

Q. Do you know what it meant?

A. Yes.

Q. Other than what you think it could mean?

A. Yes, I do, because I had been in the office that morning, and heard his offer.

Q. And you are basing your statement that that is what it meant, on the fact that you worked in the office, and heard him suggest the employees representation plan?

A. Yes.

1069 Q. And that is all that you know as to that petition, what it contained, and what it was for; is that correct?

A. That is all.

Q. Did you not talk considerably about that petition?

A. No, sir, because he didn't call me over there for a discussion.

Q. How did you happen to go over there?

A. Daluga called me over.

Q. Daluga called you over?

A. To verify something that he had said.

Q. What was it that he wanted you to verify—by the way, what does "verify" mean?

A. Well, to substantiate whatever he said.

Q. All right.

A. To prove it.

Q. What was it Daluga said—

A. He asked me—

Q. (Continuing) —that he called you over to substantiate, or verify?

A. He asked me if he wasn't right, that when he joined the union, he took an oath that he could not belong to any company union, or any other plan of that sort.

Q. And you said that was so, did you?

A. That is the substance of the discussion, as near as I can recall it now.

1070 Q. You did not hear anything that went on between Fagan and Anselm, did you?

A. No.

Q. Just before that?

A. No.

Q. But you did see them talking?

A. I did.

Q. How long did they stand there and talk?

A. Oh, I imagine four or five minutes.

Q. And how long did Daluga and Anselm talk?

A. Well, Daluga was talking to him I should say four, five or six minutes before they called me up there,—before Daluga called me up there.

Q. Did Anselm ask you to withdraw from the union?

A. He didn't ask me to withdraw from the union, no, sir.

Q. All right. Now, you were not discharged from the date of this conversation, that you fix as the 10th of September, until the 17th of February, 1937, were you?

A. No.

Q. There were no threats of discharge made against you, were there?

A. No, sir.

Q. Nor did you hear of any threats of discharge being made against anyone else, did you?

A. I never heard of no threats made to anyone else.

1071 Q. And you did not hear anyone tell you that they had been threatened, did you?

A. Not that I recall.

Q. (Continuing) With discharge—how?

A. Not that I recall.

Q. And you revealed the fact, and that fact was known to Mr. Anselm, that you were a member of the union; is that correct?

A. Naturally.

Q. And Daluga told him that he was a member of the union, did he not?

A. I don't know; I didn't hear him.

Q. Well, did he not say to him that when he joined the union, he could not join any other union because of the oath which he took? Did you not just say that?

A. The discussion was about withdrawing from the union, yes, sir.

Q. And did not Daluga call you over there to verify or substantiate the fact that he had taken an oath that he could not belong to any other company union; is that not correct?

A. That is right.

Q. Then he did tell Anselm, did he not?

A. He probably did.

Q. Well, he said that, did he not?

A. (No answer.)

1072 Q. He said that, did he not?

A. You asked me if Mr. Daluga told Mr. Anselm that he belonged to the union, and I told you I didn't hear him say that.

Q. Well, did he reveal the fact; did he say anything to indicate to Anselm that he did belong to the union?

A. Why, sure; Mr. Anselm knew that he belonged to the union.

Q. And Daluga continued to work there, did he not?

A. Yes, sir.

Q. Until February the 17th?

A. He did.

Q. All right. Now, when Mr. Fagan was testifying, you were standing at the door here, were you not?

A. Yes, sir.

Q. And you heard what he said?

A. Yes.

Q. You have got an interest in the outcome of this case, have you not?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: I will recall Mr. Kondrath. This witness has been sworn before, your Honor.

JOHN A. KONDRATH, recalled as a witness for the
1073 National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Kondrath, your normal duties when you worked at Fansteel, were in the tool room, were they not,—or the machine shop?

A. Well, it was called the tool room.

Q. The tool room.

A. Yes, sir.

Q. Now, about the first part of November was there any change in the place where you were working?

A. Yes.

Q. Will you tell the Examiner all about what that change was, and how long it lasted?

A. Well, as near as I can recall it, it was on Armistice Day in November.

Q. 1936?

A. Of 1936, yes, sir—that a telephone call had been received by my foreman, John Welch; and Mr. Anselm was supposed to have called and said that I was to gather my tools and one thing and another, and take them over to the office immediately after twelve-thirty, or after lunch.

Q. The office is located outside of the plant fence, is it not?

A. Yes, sir, it is located outside of the plant fence.
1074 Q. All right. Now, what happened, when you got over to the office?

A. Well, I gathered my tools, and went over to the office, and met Mr. Anselm, and went on into the office, and he says, "I think that you and I are going to get along pretty good here, John. I am to give you your work, and I am to inspect your work." "But", he says, "I am going to ask you to promise me one thing." I says, "What is that?" "Well," he says, "you are to work over here from eight o'clock until four o'clock, and during the noon hour you can go and eat your dinner any place you want to, except visiting inside of the plant." And at that time he called his secretary, I believe that is Mr. Schultz, to be a witness, that I promised Mr. Anselm that I will not go and visit inside the fence, or in the buildings, while I am in the office.

Then after that promise had been made, and witnessed by Schultz, he took me over to my place, where there was a lathe, and a drill press, and told me, "This is the place where you are going to work." And he says, "If there is no work, why, sit down." So some magazines were brought in for me to read at such times when there was nothing to be done; so I read magazines, and when there was a job, I done the job.

Then about a few days later, there was a general increase in the shop of 5 cents per person.

1075 Q. Per hour?

A. Per hour.

Q. Yes?

A. And I didn't know anything about it until I went home and I read it in the paper. Then it was a little later—at a later time, other things had happened, during the flood, and they took up some collections from the fellows in the shop; and somebody, I don't know who, had written some letter to Mr. Anselm, that the management was not doing so well donating; so all of a sudden that noon I am called in, just a few minutes before noon, into the office, to talk with Mr. Anselm. Mr. Anselm hands me the letter, and I read it; and then he says, "What do you think of it?" "Well" I says, "I don't know, what to think of it. I couldn't prove who sent the letter." And he says, "Well, you are the president of the lodge." I says, "Yes, I am president of the lodge. But" I says, "when I am in the office here, I don't get into contact with them; I don't get into contact with all of the members, so I really don't know what is going on in the factory." "Well" he says, "did you give these men permission to make collections on the premises?" I says, "I did not. In fact, I didn't know anything about it." "Well" he says, "You know, John, our president is Cleveland, and we have to send a telegram to him, to ask his permission whether we can make any donations." And he says, "We are not too
1076 late with it." "Well" I says, "I really don't know anything about it." I says, "I am not the same kind of president as Mr. Aitchison is, and we have got a committee in the shop that is functioning without me, and they have more power than I have."

Well, Mr. Aitchison didn't know that that was the fact, that they was working in the shop while I was in the office; and the vice president was there; he was taking my place, as far as I was concerned.

Now, in this discussion Mr. Anselm wanted to know if I knew who wrote that letter, but naturally—

Mr. Swiren: Will the witness speak a little louder, please.

A. I say, Mr. Anselm wanted to know if I knew who wrote that letter, but anybody could have written that letter.

Q. (By Mr. Walsh.) Was the letter from anybody in the lodge, do you know?

A. That I don't know. I don't know who wrote the letter, and I never did hear afterward about it. Then Mr. Anselm says, "Well, I don't know, John", he says, and then we went on talking about the Wagner Act; and Mr. Anselm asked me if I thought that the Supreme Court will rule on this thing; and I told Mr. Anselm that every indication shows that there is a possible chance for the bill to be passed; and I offered Mr. Anselm to meet with the same committee; and

I offered him, "If we can't meet here" I says, "we will
1077 meet on the outside, in the Slovenik Hall, or any other
place." "Well" he says, "there is no use in doing that We can meet here in the office at any time." But they didn't feel enthusiastic about meeting in the office, after denying the recognition of the Amalgamated Association of Iron, Steel and Tin Workers,—an outside affiliation, as they called it.

Then after this discussion I was told to go back and eat my lunch, and at that time it was during the noon hour, so I went back and ate my lunch.

Q. Now, how long did you continue working in the office?

A. Well—

Q. On the lathe, or the machinery there?

A. I stayed there a few months, but after Mr. Anselm had found out that I didn't know anything about what was going on in the plant, due to the fact that I wasn't getting any bulletin, he called Mr. Schultz in and asked him, "What is the matter, Bill? You are not giving John any bulletins here. Did you run out copies, or something?" And Schultz says, well he has just merely forgotten about it: he didn't think of it.

Q. When were you sent back to the shop?

A. I really don't remember the date, but it was a few weeks before this strike, or protest.

Q. Then that would put it in the latter part of January, or the first part of February; is that right?

A. I believe it was the last part of January, but I
1078 really don't remember the date, what date it was on.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Now, when you went from the tool room to Howard Phillips' laboratory, when was that?
A. That was on Armistice Day.
Q. On Armistice Day.
A. Yes, sir.
Q. November 11th—
A. Yes.
Q. —1936.
A. Yes.
Q. Now, what were you receiving in the tool room in the way of wages?
A. Well, at that time I was receiving 63 cents per hour.
Q. 63 cents per hour.
A. Yes, sir.
Q. For how many hours per day?
A. Why, as many as I worked.
Q. Well, what was the usual working day?
A. Eight hours.
Q. All right. And you put in eight and a half hours in the factory, in the tool room, did you not, to get your eight hours pay?
A. Yes.
1079 Q. I mean, you had a half an hour off for lunch, for which you received no pay?
A. That is right.
Q. Now, on the new job that you got, you received the same rate of pay, did you not?
A. That is right.
Q. But they paid you for the lunch hour, did they not?
A. Yes.
Q. So that you only had to put in eight hours in order to get the same amount of pay; is that right?
A. Yes, sir.
Q. Or in other words there was a difference between the jobs, and you had to put in half an hour less time in the new job than you did on the other, to get the same pay?
A. Yes.
Q. All right. And also, you say they let you read magazines on the new job.
A. Yes.
Q. When you did not have to work.
A. That is right.

Q. So that was a better job, was it not?
A. Very much better, yes, sir, only I wasn't free.
Q. You were not free?
A. No.
Q. Free to do what?
1080 A. Well, I couldn't go and talk to anybody outside, in any of the buildings.
Q. Had you been going around talking to people, when you were in the tool room, on the company's time?
A. Well now—
Q. Yes or no.
1081 A. No, I can't answer that "yes" or "No."
Q. Answer the question.
Mr. Walsh: I object. I want to say—
Mr. Keele: Just a moment. I want an answer to my question. I think it is a proper question, as to whether or not he has been going around on the company time, talking to people during working hours.
Mr. Walsh: About what?
Mr. Keele: I do not care.
Trial Examiner Dudley: The objection is overruled. The witness may answer the question.
Mr. Keele: Answer the question.
A. What is the question?
Mr. Keele: Read it to him.
(The question was read.)
Mr. Walsh: Now, if the examiner please, I think there ought to be some subject stated, for that discussion.
The Witness: I don't go around and talk to people—
Mr. Walsh: Just a moment.
Mr. Keele: He has answered the question. He said he did not.
The Witness: I didn't answer no question.
Mr. Walsh: What was the answer?
Mr. Keele: He said he did not, that he did not go around and talk to them.
1082 Q. (By Mr. Keele.) Then why do you say that you were not free, that you could not talk to anybody when you were in the laboratory?
A. Now, wait a minute. I meant, when I said I wasn't free, that I wasn't allowed, like the rest of the working men in the shop.
Q. To do what?
A. Well, now, for instance, if I needed a tool, I had to

ask Mr. Schultz to go over and get it for me, or if I wanted a wiping rag or something, I couldn't go in there and get it for myself, but I had to ask for service.

Q. Oh. You had a flunky assigned to you, in other words?

A. Yes, sir.

Q. I see. You had gotten important enough by this time so that you had a man who ran your errands for you?

A. Absolutely.

Q. So you think, do you, that the officials of the company—the president of the company, for instance, who has somebody to do things for him, is not as free as a man in the shop; is that your idea?

A. In their own activities, they are.

Q. But from your point of view they are not?

A. Well, they are, but I was not.

Q. Well, did they make you do anything in there that you did not want to do?

1083 A. Well, that didn't make any difference, whether they made me do anything or not—

Q. Well, did they?

A. No.

Q. No?

A. No.

Q. You did not have to work as long, and you were free to read magazines?

A. Yes.

Q. You had a man to run errands for you?

A. Yes.

Q. All right. But still you were worse off than you were when you were in the factory, were you?

A. Well, to the extent of the fact that I was there all alone, yes.

Q. I see. In other words, if the nature of your work requires you to be all alone, and the nature of the other work that you had required you to be with other men, you figure that you are worse off, if you are on the job all alone?

A. Yes, sir.

Q. Simonson was in there, was he not?

A. No. He came there a few weeks later, and he was there once in awhile. He wasn't there all the time.

Q. Howard Phillips was there, was he not?

A. No, not all the time. Sometimes you couldn't find

1084 Howard for days, in the shop, if they called him on the telephone or something.

Q. Do you know where he was during that time?
A. No.
Q. Well, your chief objection to that job was that you were lonesome, is that right?
A. Yes.
Q. I see. All right. Now, you ad had another job besides that in the tool room, and you worked there preceding the time you went over to the main office; that is correct, is it not?
A. Yes.
Q. You had a job on the vacuum pumps?
A. Yes.
Q. How long did you work on that job?
A. Oh, about a year and a half, or two years or so.
Q. That long?
A. Yes, sir.
Q. You had some trouble with Dr. Balke in connection with that job, did you not?
A. Not that I recall.
Q. Well, Dr. Balke did not think that you were capable of handling the job, did he?
A. Well, I wouldn't say that.
Q. You would put it a different way?
A. Yes.
1085 Q. But it means the same thing; is that right?
A. No.
Q. Well, at any rate, there was some little misunderstanding about it, was there not?
A. Well, not between Balke and I.
Q. Well,—
A. I don't recall of having any misunderstanding with Balke.
Q. Well, was it Raichel?
A. No, not with Raichel, either.
Q. No.
A. No, sir.
Q. You did not have any difficulty on that job at all, then?
A. No.
Q. Why were you taken off of it?
A. That I don't know. Luther Henry claimed I put a gauge on backward.
Q. Oh.
A. (Continuing.) But I don't see how anybody who works

on the vacuum could put a gauge on backward on the vacuum, if he knew anything about it.

Q. Luther Henry was assistant plant superintendent, was he not?

A. I don't know.

Q. How?

A. He was superintendent at times, and then he was
1086 assistant superintendent—yes.

Mr. Keele: All right.

A. But I don't know.

Mr. Keele: That is all.

Mr. Walsh: That is al.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: May we have a short recess at this time, Mr. Examiner, please?

Trial Examiner Dudley: I will declare a recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: Let the record show that the hearing is reconvened, following recess.

Mr. Walsh: George Smith.

Trial Examiner Dudley: Is this a new phase, Mr. Walsh?

Mr. Walsh: Pardon me?

Trial Examiner Dudley: Is this a new phase, that you are going into now?

Mr. Walsh: Yes. This witness has not been sworn, if the examiner please.

GEORGE WILLIAM SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

1087 Mr. Collins: Mr. Smith, were you subpoenaed to appear here at this hearing this morning?

The Witness: Yes, sir; I was.

Mr. Collins: If the examiner please, I would like to claim privilege on behalf of Mr. Smith under section 7, paragraph 3—or, rather, section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: As representing Mr. Smith?

Mr. Collins: I am claiming privilege on behalf of Mr. Smith.

Trial Examiner Dudley: The privilege is so granted.

Mr. Collins: All right.

Q. (By Mr. Walsh.) Will you state your full name, please, Mr. Smith?

A. George William Smith.

Q. Where do you live?

A. Waukegan, Illinois.

Q. You worked at the Fansteel Metallurgical Company, did you?

A. Yes, sir.

Q. When were you first employed there?

A. In October, I believe, of 1933.

Q. What was your job?

A. Plater and deplater.

Q. After the men were evicted from the plant, and the plant reopened, did you return to work?

1088 A. No, sir; I did not.

Q. I will ask you if anybody connected with the company asked you to come back to work.

A. Yes, sir; they did.

Q. Will you just tell the examiner about that; just tell him in your own words?

A. Well, about the first part of March, around the first part of March, I went in for my check, and Luther Henry was in the office and he asked me if I wanted to sign an application for a job. I said, "No, not until the rest of the fellows go back."

Mr. Swiren: Speak a little louder, please.

The Witness: I said I didn't want to sign an application for work, and I didn't want to go back until the rest of the fellows went back to work.

Q. (By Mr. Walsh.) If all of the other men were taken back, would you have gone back to work?

Mr. Swiren: Just a moment. That is objected to.

A. Yes, I would.

Mr. Swiren: Just a moment. When there is an objection, Mr. Witness, do not answer until the examiner has had an opportunity to rule.

I do not see how that has any materiality to the issues here. We ought not to have the benefit only of the speculation of this witness as to what he might have done. We ought to have the facts only, as to what did happen.

1089 Trial Examiner Dudley: I will overrule the objection, and admit it for what bearing it may have on the situation, and on his interpretation of the conversations. These conversations apparently are a bit vague, judging from previous testimony that we have had from at least one of the employees.

Mr. Swiren: Well, that does not—

Trial Examiner Dudley (Continuing): But this testimony may help explain it.

Mr. Swiren: Vagueness of conversations, or of testimony, does not justify speculation as to what this witness might have done if conditions that did not occur might have occurred.

Trial Examiner Dudley: The objection is overruled, nevertheless, and the testimony will be admitted.

The Witness: What is the question?

Mr. Walsh: Will you read the question to the witness, please, Mr. Reporter?

(The question was read.)

The Witness: I answered that.

Trial Examiner Dudley: What was the answer?

(The answer was read.)

Q. (By Mr. Walsh.) Did you have any conversations with anyone else connected with the company about coming back to work?

A. Yes, sir; with Florian Schardt.

Q. What is Mr. Schardt's position with the company?

A. Foreman in the wire department.

1090 Q. By the way, Mr. Henry is assistant superintendent, is he not?

A. Yes, sir.

Q. What did Mr. Schardt say to you, and what did you say to him?

A. Mr. Schardt asked me—

Mr. Swiren: May the witness talk a little louder?

Trial Examiner Dudley: Speak a little louder. They all want to hear you.

A. Mr. Schardt asked me if I wanted to go back to work, and I said, "Yes, when the other men go back, I will go back, too."

Q. (By Mr. Walsh.) And what did he say to that?

A. That was all that he said.

Mr. Walsh: You may inquire.

Mr. Keele: What was that last answer?

(The question and answer were read.)

Mr. Keele: No cross.

Mr. Walsh: You may step down.

Trial Examiner Dudley: Just a moment.

Q. (By Trial Examiner Dudley.) May I ask you, Mr. Smith, when and where Mr. Schardt and yourself carried on this conversation, to which you have just referred?

A. In the office of Fansteel.

Q. About when?

A. Well, now, that was about the 5th of March, when
1091 I went down after my last pay check.

Trial Examiner Dudley: That is all. Witness excused.

(Witness excused.)

Mr. Walsh: Roy Brown. This witness has not been sworn, Your Honor.

Trial Examiner Dudley: You have not been sworn?

Mr. Brown. No.

ROY BROWN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your full name is Roy Brown, is it?

The Witness: Yes, sir.

Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like on behalf of Mr. Brown to claim his exemption under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: His privilege?

Mr. Collins: His privilege.

Trial Examiner Dudley: Granted.

Direct Examination.

Q. (By Mr. Walsh.) State your address.

A. 712 North Lewis Avenue, Waukegan, Illinois.

Q. You were employed by the Fansteel Metallurgical Corporation, were you?

1092 A. Yes, sir.

Q. When were you first employed there?

A. I went to work there first in 1924, and I worked until 1929, and then I was off until 1933, and then I worked up until February 17th, 1937.

Q. Sometime after February 26th, 1937, did you have any talk with anybody at the company about going back to work?

A. Well, I had a conversation over the telephone.

Q. With whom?

A. With my foreman, Florian Schardt.

Q. And what did Mr. Schardt say to you, and what did you say to him?

A. Well, he called up one night, and he asked me—he says—I was on the picket line that day, and he asked me, he says, "Did you want to talk with me tonight?", and I told him, "No." And he says, "Well, I thought from the way you looked, you might have wanted to speak to me." And I says, "No." "Well," he says, "do you want to come back to work?" And I says, "If you will take the whole bunch back, when we all can go back, why, then I will go back."

And he says, "Well," he says, "if you ever change your mind", he says, "give me a ring, will you?" And I says, "Yes, and thank you for calling." And that was all.

Q. Did you—

Mr. Swiren: Just a moment. What was the latter 1093 part of that answer?

(The answer was read.)

Q. (By Mr. Walsh.) Did you have any conversation with anybody else about that?

A. No, that was the only time.

Mr. Walsh: You may inquire.

Mr. Keele: No cross-examination.

Trial Examiner Dudley: Just a moment.

Q. (By Trial Examiner Dudley.) You were at your home, were you, Mr. Brown, when he called you?

A. Yes, sir; I was.

Q. What time of the night was it?

A. Well, it was around about 9 o'clock at night.

Mr. Keele: Just a moment, if the examiner please. There are one or two questions, if I may.

Trial Examiner Dudley: Yes.

Cross-Examination.

Q. (By Mr. Keele.) When did this call occur? When did you receive this call?

A. It was about the middle of March.

Q. Mr. Brown, were you one of the men in the buildings, either 3 or 5, of the Fansteel Company's plant?

A. Yes.
Q. (Continuing) Between February 17th and February 26th?
A. Yes, sir.
1094 Q. You were a member of Lodge 66?
A. Yes, sir.
Q. You still are a member of Lodge 66?
A. Yes, sir.
Q. Did Mr. Schardt know—do you know whether he knew whether or not you were a member of Lodge 66?
A. Yes, sir; he knew that I was a member.
Q. He did know?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down.
(Witness excused.)
Mr. Keele: We would like to recall Mr. Smith for some questions, if the examiner please.
Mr. Walsh: All right. George Smith, will you take the stand again, please?

GEORGE WILLIAM SMITH, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination.

Q. (By Mr. Keele.) Mr. Smith, you are the same Mr. Smith who just testified a few moments ago here, after having been sworn, are you?
A. Yes, sir.
1095 Q. Were you one of the employees, former employees, of the Fansteel Company who were in buildings 3 and 5 during the period from February 17th to February 26th, 1937?
A. Yes, sir.
Q. Which building were you in?
A. 5.
Q. Were you a member of Lodge 66 at that time?
A. Yes, sir.
Q. You are still a member of Lodge 66?
A. Yes, sir.

Q. When did this conversation, to which you have referred, with Schardt and Luther Henry take place?
A. Well,—
Q. I think you stated around about the first of March, is that correct?
A. Yes, sir; the one with Luther Henry was around the first, and the one with Schardt was around the fifth.
Q. The one with Henry was around the 1st of March?
A. Yes.
Q. The one with Schardt about the 5th?
A. Yes.
Q. That is approximately correct?
A. Yes, sir.
Q. They knew that you were a member of Lodge 66, did they not?
1096 A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Mr. Mondro.
This witness has not been sworn, your Honor.

GEORGE MONDRO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: You are Mr. George Mondro?
The Witness: George Mondro.
Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?
The Witness: Yes, sir.
Mr. Collins: If the examiner please, I would like to claim the privilege of the witness, under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address, Mr. Mondro?
A. 2130 Sheridan Road, Waukegan, Illinois.
Q. You will have to talkup louder than that, so that they can all hear you.
A. 2130 Sheridan Road.

Q. You were employed by the Fansteel Metallurgical
1097 Corporation, were you?
A. Yes, sir.
Q. When were you first employed there?
A. August 1936.
Q. August 1936?
A. Yes, sir.
Q. What was your job there?
A. Taking care of the carbide furnace.
Q. You are a member of Lodge 66?
A. Yes, sir.
Q. When did you join Lodge 66, if you remember?
A. Sometime in December.
Q. Were you one of the men who occupied the company's buildings—
A. No.
Q. —between the 17th of February and the 26th of February?
A. No, sir.
Q. Oh, you were not?
A. No.
Q. Sometime after February 26th, did you have a talk with anybody about coming back to work?
A. The first one that I came in contact with was Red Hall.
Q. What is Red Hall's job with the company?
A. He is foreman in the railway signal department.
Q. What did Red Hall say to you, if anything, and
1098 what did you say to him?
A. Well, he asked me when I was coming back to work, and I says, "I don't know."
Q. Did he say anything else to you?
A. Well, yes; he says to come into the office; that Presler wanted to see me.
Mr. Swiren: Who was that?
The Witness: Pressler.
Q. (By Mr. Walsh.) Who was Presler?
A. He was foreman in the tantalum department.
Q. Is that Gene Presler?
A. Yes, sir.
Q. Did you go into the office and see Presler?
A. I did.
Q. What did he say to you?
A. Well, he says,—he asked me if I was ready to come to work.

Q. What did you tell him?
A. I says, "No."
Q. Did he say anything else?
A. Well, he says—he handed me a card and he says, "Here is a pass. You can get through in the morning. I want to see you in the morning"—the following morning.
Q. Did he know that you were a member of Lodge 66?
A. Yes, sir.
Q. Now, did you talk to anybody else?
A. Well, after I didn't show up there for a couple of days, why, I met him after lunch hour, coming out of the cafe. Mr. Simms, the foreman of the tungsten department, came out first, and he seen me, and he says, "I thought you was coming back to work?" And I says that I wasn't.
Then Mr. Presler came out, and he asked me why I didn't call him; and I says, "I will think it over."
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) Did you fill out a new application, Mr. Mondro?
A. Well, I think I signed my name and my address to it, and my age, but that is about all.
Q. And you thought that the application was accepted, for you to come back to work the next day; is that right?
A. I didn't think it was accepted; no, sir; because I didn't fill it out.
Q. What is that?
A. I didn't think it was accepted because I didn't fill it out.
Q. Well, you signed it and handed it in; is that right?
A. I signed my name to it, yes.
Q. To whom did you give it?
A. Well, Mr. Luther handed it to me, but nobody accepted it from me. I just went on out, and I just left it there.
Q. You left it where?
A. On the desk.
Q. On Mr. Henry's desk?
A. I don't know whose desk it was.
Q. Well, was Mr. Henry sitting at that desk?
A. No.
Q. (Continuing) When he talked to you?

A. No, sir. He just handed me the application, and I went away and left it there.

Q. You do not know whose office that was?

A. No, sir.

Q. Did you get a card—

A. Yes.

Q. —to come into the plant?

A. I did.

Q. What did you do with that card?

A. I have got it in my pocket.

Q. Do you still have it?

A. Absolutely.

Q. Would you let me see it?

A. Sure.

(The card was produced.)

Mr. Swiren: If the examiner please, I ask that this card be marked as respondent's exhibit No. 5 for identification.

1101 (The card referred to was thereupon marked Respondent's Exhibit No. 5 for identification.)

Q. (By Mr. Swiren.) I now show you respondent's exhibit No. 5 for identification, which you have produced at my request, and ask you whether that is a new form of card that was different from the one that was used prior to February 17th by the employees.

A. Yes, sir; that is right. The other one was yellow, and this is red.

Q. Yes. This is the employee's pass that it is necessary to have, on order to get through the gate, is it not?

A. Yes, sir.

Q. You did not report for actual work after you had handed in your application?

A. No.

Q. (Continuing) Or after you left it on the desk, and after you received this card?

A. No.

Q. By the way, you received this card from whom?

A. Gene Presler.

Q. And you received that after you had signed the application?

A. Before I had signed the application.

Q. Before?

A. Yes, sir. He brought it right out, and just left it there.

Q. Left it there?

1102 A. Yes.

Q. And you signed the application right at that time?

A. Well, all that I did was to put my name down, and my address; that was all.

Mr. Swiren: We would like to offer respondent's exhibit 5, for identification, in evidence as respondent's exhibit 5.

Mr. Walsh: I do not know that I will object to its being offered, Mr. Examiner. However, I would like to know the purpose of the offer.

Mr. Swiren: Would you prefer that we wait? We have just had it marked for identification. We will withdraw the offer at this time, and wait, and put them all in together in our own case.

Mr. Walsh: As I say, I do not know that I will object to it, even when you do offer it—

Mr. Swiren: Well, we will wait.

Mr. Walsh: All right.

Mr. Swiren: And have the exhibits all offered at the same time.

Mr. Walsh: All right.

Mr. Swiren: You do not have any objection to giving up this card now, since you are not working at the plant, do you?

The Witness: Any objection?

Mr. Swiren: Yes.

The Witness: Well, I don't know. I think I would

1103 rather keep it, if it is all the same.

Mr. Walsh: Would you care to have it photostated, and put in a photostatic copy?

Mr. Swiren: This is only for your use in getting in and out of the plant as an employee, is it not?

The Witness: Well, but still—

Mr. Swiren: Is that right?

The Witness: Yes.

Mr. Swiren: We ask that it be received as a part of the record of this case.

Mr. Walsh: Are you offering it at this time?

Mr. Swiren: No. We will offer it when our turn comes, but we ask at this time that it be retained, as a part of the record in this case.

Mr. Walsh: Would you mind having it photostated, and putting in a photostatic copy?

Mr. Swiren: I do not think that a man, who does not

use the card for the purposes for which the respondent issued it, has any business having it, anyhow.

Mr. Walsh: Well, would you mind just explaining to me for what purpose you are offering it, or going to offer it?

Mr. Swiren: I am not offering it as yet. We will offer it when our case goes in.

Mr. Walsh: Well, it is the property of this man, and if you are going to retain it, and take it away from him,
1104 we ought to know why that is being done.

Mr. Keele: If the examiner please, it is not the property of this man.

The Witness: You say it is not?

Mr. Keele: It is just loaned to him, given to him by the company, so long as he is an employee. Rather than have any quarreling about it, however,—

Mr. Swiren: This man has no business with this card.

Mr. Block: It is just like any other document, if the examiner please. The Board has the right to keep it under its control until the case is disposed of.

Mr. Walsh: Well, I will not object.

Trial Examiner Dudley: Mr. Mondro, do you object to this card being filed in the record of the Board here, or do you want it back?

The Witness: I don't want him to have that card, Your Honor. I want that card. It was given to me.

Mr. Walsh: It would be a part of the record, naturally, Mr. Mondro. We will not give it to him. We will keep it in the record.

The Witness: All right.

Trial Examiner Dudley: It will be kept in the record, and go eventually to Washington.

The Witness: O. K.

Trial Examiner Dudley: And if you want it back,
1105 we can have a copy photostated, and you can keep this, being the original.

Mr. Walsh: I would suggest that we just leave it in the record.

Mr. Swiren: That is exactly what I had in mind.

Trial Examiner Dudley: And then if you still want it, you can get it from the Government.

The Witness: All right.

Trial Examiner Dudley: Mr. Reporter, I will ask you to keep this card with the other exhibits. If you want it at any time, Mr. Mondro, let us know.

The Witness: O. K.
Trial Examiner Dudley: Are there any further questions?
Mr. Swiren: Nothing further.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down.
(Witness excused.)
Mr. Walsh: Paul Wells. This witness has not been sworn, if the examiner please.

PAUL WELLS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Paul Wells?
The Witness: Yes, sir.
Mr. Collins: You were subpoenaed to appear here before the examiner today, were you?
1106 The Witness: Yes, sir.
Mr. Collins: If the examiner please, I would like to claim the privilege of the witness, on behalf of the witness, under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) State your address, Mr. Wells.
A. 1638 South Park, North Chicago.
Q You were employed by the Fansteel Metallurgical Corporation, were you?
A. Yes, sir.
Q. When did you first become employed there?
A. The middle of April 1936.
Q. What was your job over there?
A. Apprentice in the tool room.
Q. Are you a member of Lodge 66?
A. Yes, sir.
Q. When did you become a member of that Lodge?
A. Well, sometime during the month of July 1936.
Q. Was your membership known to the company?
A. Well,—
Q. Did the foreman, or others, know that you were a member of Lodge 66?

A. Why, I think they did.

Q. Do you know?

1107 A. I don't know.

Q. Sometime after February 1937, did anyone connected with the company ask you to come back to work?

A. Yes.

Q. Who was it?

A. His name was Chester Hook.

Q. What does he do at the company?

A. He is an apprentice in the tool room.

Q. Will you just go ahead and tell the examiner what he said to you, and what you said to him?

Mr. Swiren: Just a moment.

A. I was called to the door—

Mr. Swiren: Just a moment. I object to that. There is no authority shown. We do not know what the conversation was, but it cannot bind us.

Trial Examiner Dudley: The objection is overruled.

Mr. Swiren: Merely because some party, an apprentice in the tool room, had a conversation with this man—

Trial Examiner Dudley: Overruled.

Q. (By Mr. Walsh.) You may answer the question.

A. Well, Chester was waiting at the door, when I came downstairs—

Q. Was this at your home?

A. Yes, sir.

Q. Do you remember the day?

1108 A. I think it was the first week in March, but the exact day I don't remember.

Q. All right.

A. I was called downstairs, and Chester was by the door, and I says, "What do you say, Chet?" and he says, "Well, it is up to you to say whether you want to work or not." And he says, "We are running full blast." And I says, "No, I went out with the rest of the boys", I says, "and I can't come back until they all come back."

Q. What did he say?

A. Well, then, he says, "Well, it is up to you." He says, "I will take care of your tools, if you want."

Q. Did you have any other conversation with anybody else about coming back to work?

A. No.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Were you one of the fellows occupying buildings 3 and 5 of the Fansteel Company's plant?
A. Yes, sir.
Q. During that period, from February 17th to February 26th?
A. Yes, sir.
Q. You are a member of Lodge 66, are you?
A. Yes, sir.
Q. And you were a member at that time—or prior
1109 to February 17th?
A. Yes, sir.
Q. And that was known to the company, or to the officials of the company, was it?
A. Well, I don't know if it was known to the officials of the company, but the man I worked for knew that I belonged to the union, though.
Q. Who was that?
A. Mr. Henry Bergquist.
Q. You say he knew?
A. Yes, sir.
Q. He is one of the foremen?
A. No.
Q. Well, a straw boss?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Mr. Jackaway. Will you swear this witness, please, Your Honor?

JOHN JACKAWAY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Jack Jackaway?
The Witness: John Jackaway.
1110 Mr. Collins: John Jackaway.
The Witness: Yes.
Mr. Collins: You were subpoenaed to appear here before the examiner this morning, were you?
The Witness: How is that?

Mr. Collins: Were you subpoenaed to appear here before the examiner this morning?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like, on behalf of the witness, to claim his privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address, Mr. Jackaway?

A. 433 South Victory Street, Waukegan, Illinois.

Q. Were you employed by Fansteel?

A. Yes, sir.

Q. When did you first go to work there?

A. Well, I don't just remember the date, but it was around 7 years ago, or a little over.

Q. What is your job over there?

A. Well, I done different work; I worked on the furnaces, and done different jobs around there.

Q. Are you a member of Lodge 66?

A. Yes, sir.

1111 Q. Sometime after February 26th, 1937, did anyone connected with the company ask you to come back to work?

A. Well, I was sent for by a party.

Q. Who was the party who sent for you?

A. Mr. Chapman.

Q. What does Mr. Chapman do over there?

A. He is in the laboratory, but I don't know exactly what he does.

Q. Did you talk to Mr. Chapman?

A. Yes, I did.

Q. What did he say to you, and what did you say to him?

A. Well, he didn't have very much to say. All that he asked was if I wanted to come back, that was all. I told him I didn't see how I could.

Q. Did you tell him why you could not?

A. Well, no, I didn't tell him why.

Q. At that particular time, were there a number of men out?

A. Well, on strike, you mean?

Q. Yes.

A. Yes, sure. They were out on strike.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You were one of the men occupying buildings No. 3 and 5 during the period from February 17th to February 26th, were you, Mr. Jackaway?

1112 A. How is that again?

Q. You were in the sit-down strike, were you?

A. I was in it, yes, sir.

Q. During the entire period?

A. Yes, sir.

Q. You were a member of Lodge 66 prior to February 17th, were you?

A. How is that?

Q. That is, before February 17th?

A. Yes, sir.

Q. You are still a member of Lodge 66?

A. Yes, sir.

Q. Have been continuously?

A. Yes, sir.

Mr. Keele: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Did Mr. Chapman know that you were a member of the Lodge?

A. I suppose he did, but I don't know.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: W. D. Crump. This witness has now been sworn, if the examiner please.

W. D. CRUMP, called as a witness for the National La-

1113 bor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is W. D. Crump?

The Witness: Yes, sir.

Mr. Collins: Were you subpoenaed to appear before the examiner here this morning?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, if the examiner please, I would like to claim his privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

Q. (By Mr. Walsh.) Your address, Mr. Crump?
A. 2103 Sharon Lane, Waukegan, Illinois.
Q. Were you employed by the Fansteel Company?
A. Yes, sir.
Q. When were you first employed there?
A. Well, I first started there in 1916.
Q. 1916?
A. Yes, sir.
Q. Have you worked there continuously since that time?
A. No, sir; I was off during the War, and then I went back again in 1921; and then I believe it was in 1929 Mr. Anselm transferred me to the Balkite Division, and I was in the Balkite Division until they went bankrupt; and at that time
1114 I was laid off; I was not transferred back to the Fansteel side again. There was a period in there of about 3 or 4 months, I believe, when I was laid off, or discharged, or whatever you want to call it; and then I was called back to work by Mr. Henry. Mr. Dow claimed at that time that I started new employment, that I came back as a new man, and they did not consider my previous record at all, although since 1916, except for War service, and a period of 3 months during the slack season when I worked for the Cyclone Fence outfit, I have been continuously employed by the Fansteel Corporation, either on the Fansteel side or the Balkite side.
Q. What is your work over there—or what was your work?
A. Well, at the last, I was in the swedging department.
Q. And how long had you been in that department?
A. Since 1931, I believe it was.
Q. Had you received any raises from the time you went in there until you were finally—or, until February 17th?
A. Well, when I first went in, I went in with a cut.
Q. From what you had been receiving, when you were working at Balkite?
A. When I was laid off, working on the Balkite side.
Q. Yes?
A. Then I went along for a while, and I did get a raise in there of 5 cents; and then there was a period of time, after the union activities started, and then we did get a few raises.
1115 Q. You participated in the raises, I take it?
A. Yes, sir.
Q. With the rest of the fellows?

A. At the end; yes, sir.

Q. Now, had there been any criticism of the work which you were doing in the swedging department, by your foreman, or by any other official of the company?

A. Well, our sub-foreman, the man we took orders from in there, why he never was really designated as our foreman, but he laid out our work for us; and after he received this job, he caused to be installed an extra machine in there, and he expected us to take care of that machine.

That is, there were two of us on what they call the "continuous machine."

1116 I had one, and Nic Bankowisch had the other. So he installed—or he had installed a finishing machine, and because we were qualified to operate these machines in an easy manner, that is, so we did not have to push ourselves, which he himself could not do, we had time enough to keep this other machine rolling. In other words, we were doing three men's work for two men's pay. We received no compensation for that at all.

Q. Now, were you on the night shift just prior to February 17th?

A. Yes, sir.

Q. On February 17th, what time did you arrive at the company's plant?

A. I believe it was around twenty minutes, or a quarter to three.

Q. And you were there—

A. That was the usual time when I got there.

Q. And you were ready to go to work; is that right?

A. Yes, sir.

Q. There was some trouble there at that time, was there not?

A. Yes, sir, there was. Mr. Lund—

Q. Who is Mr. Lund?

A. He was the watchman at the gate.

Q. Yes.

1117 A. I got there, it seemed, just as the thing started, or just as the people started coming out, because he was going to leave me in the gate, he started to open the gate to leave me in, when Mr. Schultz ran over from the office and held me up for the time, and told me to wait awhile, and he talked with Mr. Lund, and Mr. Lund came out to me and told me to come back tomorrow. Well, I waited around a little

while, and I asked him what the trouble was. Well, he said, they would let me know. So then I left and went home.

Q. They told you they would let you know—what?

A. Well, I suppose when to come back to work, or what to do; but they did tell me to come back "tomorrow."

Q. Yes.

A. The following day.

Q. Did you come back the next day?

A. Well, I was down there.

Q. Was there any work going on?

A. No, sir, there wasn't any work that I could see going on.

Q. Did you later draw your pay from the company?

A. Yes, sir.

Q. What happened at that time?

A. Well, I went down and I received one check, and there was nothing said at that time, and when I went down to draw my last check—I had one day coming—I was asked by a deputy, I believe it was, or whoever was inside of the door 1118 there, if I wanted to fill out an application card, or what I wanted in the office; and I told him that I was down to receive my pay; so he sent me over to the information desk.

So they sent up my number, and Schardt, the timekeeper—I don't know his first name; George, I believe—came down with my pay check and took up my pass; and he told me at that time that when we were called back to work, a new card would be issued. I didn't want to give up my card. It was yellow, a yellow card. But he says, it would be no good any more, because the company was going to issue a red pass, and that is what we would receive when we came back to work. That was all there was to it at that time.

Q. Did you know that you were a member of Lodge 66?

A. Well, I am sure that our foreman knew it—or our subforeman.

Q. And since that time you have not been notified to return to work?

A. No, sir, nobody has called me at all.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Crump, you did return to the plant on February the 18th, did you not?

A. Oh, yes.

Q. And on the 19th?

A. I was down there pretty nearly every day.

1119 Q. You worked, did you not?
A. No, not at the plant.
Q. Oh, no, not at the plant.
A. No.
Q. I understand that, but you carried in bedding and food, or helped carry bedding and food in to the men, did you not?
A. Well—
Q. Yes, or no.
A. I inspected it.
Q. Well—
A. Yes, I seen that it went in.
Q. You assisted in it?
A. Yes.
Q. In getting food and supplies in to them?
A. Oh, yes.
Q. You knew that there was an injunction against doing that, did you not?
A. No, sir, I didn't see any injunction about putting food or bedding in there.
Q. No, but you knew that there was an injunction against the men staying in there?
A. Oh, yes.
Q. You knew that?
A. Oh, yes.
Q. But you were assisting them in staying in there?
1120 A. Well—
Q. You were making it possible for them to stay in there, or helping to make it possible, were you not?
A. I believed we had the right to do it.
Q. Well, I say, you were?
A. Oh, yes.
Q. I am not going to argue with you about the theory of it. You were.
A. Yes, sir.
Q. Have you a brother who was formerly employed at Fansteel?
A. Yes, sir.
Q. That is Lester Crump?
A. Yes, sir.
Q. And he was in the buildings?
A. Yes, sir.
Q. During this period from February the 17th to February the 26th?
A. Oh, yes.
Mr. Keele: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Crump, I believe you told Mr. Keele that you were inspecting packages of bedding, and things, going in there?

A. Yes, sir, we were.

1121 Q. Did anybody give you any permission to do that?

A. Yes, sir, the officers at the buildings, inside the gate, the uniformed officers. We didn't pay any mind to those base ball bat artists, but any man in uniform, we respected. As long as a package was inspected there, they said we had the right to put it in. As long as there was no arms, or liquor, or anything that could be used to do any damage, it could go up into the buildings. So they had a place inside, where they inspected packages, and we had a place outside, and anybody that brought anything in there, we felt to see that there was no knives, and so forth.

Q. You inspected it?

A. Yes.

Q. And passed it through the fence?

A. Yes.

Q. And the officers inspected it inside the fence; is that right?

A. No, we tied it on a line, and we let it over the fence, and we dropped it down so that they could put their hands in and feel.

Mr. Walsh: All right.

Recross Examination.

Q. (By Mr. Keele.) Did you get any permission from any of the officials of the company, to do that?

A. No, sir, we did not.

1122 They never stopped us. Mr. Henry was there, and he seen it going on, and he never refused us, or anything else.

Q. There were quite a number of people on the outside of the fence at that time, were there?

A. Yes, sir, there was lots of them.

Q. Who authorized you to send that food in there, or to put that food in there?

A. Nobody authorized me to send it in.

Mr. Keele: That is all.

Mr. Walsh: That is all.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Art Holm, Sr. This witness has not yet been sworn, your Honor.
Trial Examiner Dudley: Raise your right hand and be sworn.

ART HOLM, SR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Art Holm, Sr.?
The Witness: Yes, sir.
Mr. Collins: Were you subpoenaed to appear here before the Examiner this morning?
The Witness: Yes, sir.
Mr. Collins: If the Examiner please, I would like on behalf of the witness to claim his privilege under Section 1123 11, paragraph 3 of the United States Labor Relations Act.
Trial Examiner Dudley: The privilege is granted to the witness.

Direct Examination.

Q. (By Mr. Walsh.) State your address, Mr. Holm.
A. 142 McKinley Avenue, Waukegan, Ilinois.
Q. You were formerly an employe of the Fansteel Metallurgical Corporation, were you?
A. Yes, sir.
Q. I think you were foreman there, were you not?
A. Yes.
Q. How long had you been a foreman?
A. Well, I think I was foreman about 17 or 18 years.
Q. How long had you been employed by the company altogether?
A. A little over 19 years, I think it was.
Q. I believe that you were discharged from this company sometime in February, were you not?
A. Yes, sir, February the 26th I got a nice letter that had 21 cents worth of stamps on it, saying that I was discharged.
Q. And at the time you were discharged, you were not a member of Lodge 66, were you?

A. No. I couldn't be.

Q. You were not eligible for membership in Lodge 66 at that time, were you?

A. No, sir.

1124 Q. Do you recall when Mr. Anselm returned to Fansteel in the fall of 1936?

A. Yes, sir. He was there—he must have come around—well, he was there when I come back from my vacation, so he must have gotten there the latter part of August.

Q. Well, when did you return from your vacation?

A. Two weeks after Labor Day.

Q. Did you have any talks with Mr. Anselm after you got back from your vacation?

A. Yes, sir. He called me into the office the first morning when I came back.

Q. Did you have a talk with him at that time?

A. Yes, sir.

Q. Will you tell the Examiner what you talked about, what was said by him and what was said by you?

A. Well, I can't remember every word, but I can remember the story. He called me over into the office, and he says—that was the first I knew he was back, of course; and I went in and says, "Hello, Al. When did you get back?" "I got back a couple of weeks ago," he said. "Well" I said, "I wish you luck. I think you are going to it this time"—or words to that effect. And he says, "Well, I suppose you think" he says, or "the men seem to think that I am back here to break up the union." "Well" I says, "Al, what can you expect, put-

ting up a big fence around the plant, and you have been 1125 gone for a couple of years. What else can they think you are going to do," I says. I says, "You know dog-gone well, they can't think anything else." "Well" he says, "I don't want them to have that feeling. If I don't make a go of it this time, I am going up to my fishing lodge again in northern Wisconsin." "Well" I says, "I think you will be headed for your fishing lodge pretty soon."

Q. What did he say to that?

A. Well, he just laughed;—he was good-natured. Of course he knew I was always sincere. Him and I were friends for years.

Q. You had known him for 15 or 16 years, had you?

A. Oh, yes; I had known him for 20 years.

Q. Now, during the progress of some labor trouble that occurred out at the plant, did you take any part in that trouble?

A. In the trouble?

Q. Yes,—did you take sides, on one side or the other?

A. Well, I naturally took sides—I always take sides with the laboring man, the laboring man's side. I always take his side. I am a laboring man myself.

Q. As a matter of fact, you had a son who was in one of the buildings, did you not?

A. Yes, sir.

Q. Did you do anything to aid the men who were in the buildings?

1126 A. Well, I guess I done something; I helped them all I could. I didn't like to see them freeze to death, or starve to death.

Mr. Walsh: You may inquire.

Mr. Keele: If the Examiner please, I think that the testimony of this witness—and I so move the Trial Examiner—should be stricken from the record, on the ground that there is nothing connecting up this man in any way with the strike. He was not a member of the union; he was a confidential employe who was discharged; and he has not shown that there was any statement, he has not shown that there was anything in the letter, to that effect. The charge in the complaint is that he was suspected, whatever that means, of being a member of the union, and yet he testifies that he was not even eligible to membership in the union, and that everybody knew he could not be a member.

I do not see how this has any connection—

The Witness: I joined the union after I left.

Mr. Swiren: Just a moment. These remarks are being addressed to the Examiner.

Trial Examiner Dudley: Just a moment.

Mr. Keele: I do not believe there is any evidence connecting this up in any way.

Trial Examiner Dudley: Well, I will overrule the objection, or deny the motion, and let the evidence stand, in
1127 order that it may be examined by the Board and by myself later for such action as we may deem proper.

Q. (By Mr. Walsh.) You are a member of the union now, are you not?

A. Yes, sir.

Q. Has anybody from the company ever asked you to come back to work?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) When did you join the union, Mr. Holm?

A. Well, a week after they were all out of the buildings, sir.

Q. You got that letter on the 25th of February—or the 26th?

A. The 26th.

Q. And you joined the union a week later?

A. Yes, sir.

Q. What position did you hold on February the 25th, at the Fansteel Company?

A. On February the 25th, I was still rated as a foreman, I suppose.

Q. Foreman of what department?

A. The maintenance department.

Q. Maintenance department?

1128 A. Yes, sir.

Q. And how long have you held that job? You had been on that job for sometime, had you not?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: At the moment, if the Examiner please, I have encountered a dearth of witnesses.

Mr. Keele: It is nearly noon. Supposing we adjourn a little early and reconvene a little early this afternoon.

Trial Examiner Dudley: At 1:30?

Mr. Walsh: Is that agreeable to counsel?

Mr. Keele: Yes.

Trial Examiner Dudley: Very well, then; I will declare a recess at this time until 1:30 this afternoon, at which time we will reconvene in this room.

(Whereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m.)

After Recess.

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing is reconvened.

Mr. Walsh: I will recall Mr. Swanson. This witness 1129 has previously been sworn, your Honor.

CARL ANDREW SWANSON, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Swanson, subsequent to February the 26th, 1937, did the union authorize a committee to call upon the company?

A. Yes, sir.

Trial Examiner Dudley: What was that date, please, Mr. Reporter?

(The question was read.)

Mr. Walsh: Mr. Reporter, will you mark this Board's exhibit No. 25 for identification, please.

(The document referred to was marked Board's exhibit No. 25, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, I will hand you what has just been marked by the reporter Board's exhibit No. 25 for identification, and I will ask you if these are the minutes of the meeting of the union, of March 3rd, 1937?

A. As I recall it, it was a resolution that was adopted at that time, at that meeting.

Q. I see.

A. (Continuing.) To give power to the committee named in there.

1130 Q. To call upon the company for certain purposes?

A. Yes, sir.

Q. What were those purposes?

A. To try to open negotiations for collective bargaining, in recognition of Lodge 66 and its members.

Mr. Walsh: I offer Board's exhibit No. 25 for identification, in evidence, if the Examiner please.

Mr. Keele: It is objected to on the ground that it purports to be the action of the employes of the company. The evidence thus far adduced has shown, however, that the men purporting to be employes, in this document were discharged as of February 17th, and they were not employes at any time subsequent thereto.

Trial Examiner Dudley: I will overrule the objection on the ground that the resolution is pertinent, even though it is pertinent only to former employes, in view of the testimony which we have taken today.

However, I will ask the reporter to read me the questions and answers in connection with the identification of this document.

(The record was read as above recorded.)

Trial Examiner Dudley: That is sufficient. Mr. Walsh, the witness has not identificated this yet, as being the minutes.

Mr. Walsh: I probably was in error, if the Examiner
1131 please. It is a resolution that was passed. I thought it was the minutes of the meeting.

Trial Examiner Dudley: Is it the minutes, or a resolution?

Mr. Walsh: Pardon me?

Trial Examiner Dudley: Is it the minutes, or a resolution?

Mr. Walsh: No, it is a resolution that was passed at that meeting. I thought it was the minutes of the meeting, but it is a resolution.

Q. (By Mr. Walsh.) This does not constitute the entire minutes of that meeting, does it, Mr. Swanson?

A. No, sir.

Q. This is an excerpt—

A. Yes.

Q. —from the minutes?

A. Yes, sir.

Q. It is a resolution?

A. Yes, sir.

Q. That was passed at that meeting?

A. Yes, sir.

Trial Examiner Dudley: It may be admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT 25, Witness Swanson.)

1132 Q. (By Mr. Walsh.) Mr. Swanson, pursuant to that resolution, did the committee call upon the management —did the committee of the union call upon the management?

A. You mean, did we carry that resolution out?

Q. Yes.

A. Why, yes, sir.

Q. What did you do in the carrying out of that resolution?

Mr. Swiren: Just a moment. We object to the entire line of questioning with respect to action authorized or taken by men who were discharged for seizing and holding the property of the company. We do not think that men who were properly discharged had any further rights to bargain on behalf of themselves, as employes, or former employes.

Trial Examiner Dudley: I call counsel's attention to the fact that the complaint sets out, among other things, the re-

fusal on the part of the company of the reinstatement of certain employes; and that your answer sets up various reasons for the refusal to reinstate. Therefore, the activities of both the union and the company, as to what the reasons were for the refusal to reinstate, would be pertinent.

Mr. Swiren: But this is after—

Trial Examiner Dudley: Your answer likewise—go ahead.

Mr. Swiren: Of course, the question as to whether a man was reinstated or not, is immaterial, if he was discharged for cause, or for any reason not condemned by the act that
1133 we are considering here today.

Trial Examiner Dudley: But your answer goes into the reason for the refusal of reinstatement, likewise.

Mr. Swiren: Yes, but this is all after the date of failure to reinstate.

Trial Examiner Dudley: And your answer likewise deals with times after the discharge.

Mr. Swiren: The only dates, the two dates with respect to these items, are February the 17th and February the 27th. We are here talking about proposals by these men to negotiate or bargain collectively at a time when, the evidence shows without dispute they were not employed, and had not been required to sever their connection with the company for any reason condemned by the National Labor Relations Act.

It seems to me that there is no reason to go into that until they lay a foundation. That foundation has not yet been laid. They have not shown the slightest bit of evidence yet, with respect to discharge or reinstatement.

Trial Examiner Dudley: It will be admitted, subject to your objection and exception.

Mr. Walsh: Answer the question, please.

The Witness: What was the question?

Mr. Walsh: The reporter will read it.

(The question was read.)

1134 A. The committee had a meeting, and decided upon a time to call upon the management, and a document was formed to present to the company, to express certain desires of this organization; and we decided upon, I believe, the time of one o'clock, but I am not positive of that. We went to the office of the Fansteel Metallurgical corporation, and I acted as spokeman. I went to the information desk and told the girl there that there was a committee that would like to see the management for a few moments. She asked me to wait for a few minutes and she would see.

Shortly afterwards, why, we were invited to go up to Mr. Aitchison's office. We went up there, and when we arrived there we found Mr. Aitchison, president of the firm, Dr. Driggs, I believe in charge of the laboratory and laboratory work, Mr. Anselm, the plant superintendent, and I believe there was a stenographer there.

I addressed Mr. Aitchison, and told him that this committee had something for their consideration, and that we had it in writing, and that we would like to have the answer that we took back in writing; and I handed him a copy of it. He started to read it, and he handed it—after he had read it, he handed it to Mr. Anselm; and in the meantime. I had another copy and I asked Dr. Driggs if he would care to see the other copy that I had, which was the same, to save time, and he said, yes, that he would, and he read it.

1135 After Mr. Anselm had finished reading the copy he had, he handed it back to Mr. Aitchison, and Mr. Aitchison made a remark to the effect "It is the same as before" or something like that, "isn't it, Al?

Then, there was an interruption at that time; somebody came to the door and spoke to somebody, some message, I don't know what it was; and then I asked if there was any further discussion, and he said, "No." He said, "You have asked for an answer in writing, and we would like to take that privilege, and give you that answer in writing."

And then I asked him if we could have it immediately, and he said, "No", that they would like to have a little time to consider the matter, and they would give us—send us a written answer at the most opportune moment.

Q. And did you get any answer from Mr. Aitchison?

A. Yes.

Q. To that proposal?

A. Yes, sir.

Mr. Walsh: Counsel, will you see if you have a copy of the proposal?

Mr. Swiren: If we have a copy?

Mr. Walsh: Yes, and would you furnish us with a copy, if you have one.

Mr. Swiren: I think we have: I will check up and see.

Mr. Walsh: They do not have a copy.

1136 Mr. Swiren: Is this what you want?

Mr. Walsh: Yes. Please mark this Board's exhibit No. 26 for identification, Mr. Reporter.

(The document referred to was marked Board's Exhibit 26, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, did you keep a copy of the proposal which you submitted to Mr. Aitchison?

A. There was a copy, yes.

Q. You do not have that in your possession at this time, do you?

A. No, sir; I can't find it, at the present time.

Q. I will hand you what has been marked Board's exhibit No. 26 for identification, and ask you if that is the letter that you received from Mr. Aitchison, in reply to the proposal that the committee submitted to him?

A. Yes, sir.

Mr. Walsh: I offer it in evidence.

Trial Examiner Dudley: You will make the same objection, I take it.

Mr. Swiren: Yes, it is objected to on the same grounds that we objected to the entire line of inquiry.

Trial Examiner Dudley: The objection is overruled for the same reasons, and the document is admitted.

(The document referred to was received in evidence as BOARD'S EXHIBIT 26, Witness Swanson.)

1137 Q. (By Mr. Walsh.) Did you do anything or did you hav any further meetings with Mr. Aitchison about this same matter?

A. Yes, sir—that is, there was another attempt made by the committee.

Q. Did you submit a further proposal at that time?

A. At a later date, we did.

Q. What was that date?

A. I believe it was around March 5th or 6th, as I recall it.

Q. You submitted a proposal in writing at that time, did you?

A. Yes, sir.

Q. And what did that—or who was present at the time you submitted that to the management?

A. Well, there was Harold Dreyer, Frank Latz, myself, Mr. Anselm, Mr. Aitchison, Mr. Driggs, and a stenographer.

Mr. Walsh: Mr. Reporter, will you mark these Board's exhibits 27 and 28 for identification, please?

(The documents referred to were marked Board's Exhibits 27 and 28 respectively, for identification.)

Q. (By Mr. Walsh.) Mr. Swanson, I will hand you what

has been marked Board's exhibit No. 27 for identification and ask you if that is a stenographic transcript of that meeting?

A. I believe it is.

Q. I will hand you what has been marked Board's
1138 exhibit No. 28 for identification and will ask you if that is the reply of the company to the proposal which you submitted on March 5th, 1937?

A. Yes, sir.

Mr. Walsh: I will offer these both in evidence, if the Examiner please.

Trial Examiner Dudley: The same objection, I take it?

Mr. Swiren: The same objection.

Trial Examiner Dudley: The objection is overruled for the same reasons, and the documents are admitted in evidence.

(The documents referred to were received in evidence as BOARD'S EXHIBITS NOS. 27 AND 28, respectively, Witness Swanson.)

Q. (By Mr. Walsh.) Did you have any copy of the proposal which was submitted on March 5th, 1937?

A. There were copies, yes, sir, but they are not—they have not been able to be located up to the present time.

Mr. Walsh: May we have a copy of that proposal also?

Mr. Keele: Yes.

Mr. Swiren: I think we have that.

Mr. Walsh: You will submit it. You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) Mr. Swanson, referring to the resolution that appears as Board's exhibit No. 25; was that adopted at a meeting of Lodge 66?

A. Yes, sir.

1139 Q. And can you tell us who was present at that meeting?

A. Why, I couldn't tell you who was present at that meeting, no, sir.

Q. Would you say that most of the people at that meeting were at that time working at the Fansteel plant, or were not at that time working at the Fansteel plant?

A. I would say that almost entirely, all of the people present at that meeting were employes of the Fansteel Metallurgical Corporation—

Q. I did not ask you that.

A. —on strike.

Q. I did not ask you as to your opinion as to whether they were employes or not. I want to know whether they were working at that time.

A. They were strikers at Fansteel.

Q. Were they working in the Fansteel plant at that time?

A. They were not working in the plant at that time.

Q. You had a considerable number of members who at that time, and subsequently thereto, did work at the Fansteel plant, did you not?

A. I don't understand that question.

Mr. Swiren: Read it, please.

(The question was read.)

Mr. Swiren: I do not think you understand my question. Mr. Swanson: I am talking about, at the time of
1140 this meeting. The exhibit will give the exact date—

Mr. Walsh: March 3rd.

Mr. Swiren: March 3rd, 1937.

Q. (By Mr. Swiren.) A large number of your members were at that date actually working in the Fansteel plant, were they not?

A. No. There was—on March 3rd, there was only just a few of our members that were working at the plant.

Q. Well, do you know who those were?

A. No, I couldn't identify them at this time.

Q. Were they at that meeting?

A. No, sir.

Q. So far as you know was anyone who was at the date of that meeting actually working in the Fansteel plant, at that meeting of March 3rd?

A. At the present time, there is.

Q. No, I am talking about people who were then working.

A. There was no one working of course, who was at the meeting at that time.

Q. No.

A. (Continuing.) Working in the plant, at that time.

Q. And were you purporting to act on behalf of people who were not at that meeting, when you came to see Mr. Anselm and Mr. Aitchison?

1141 A. We were acting or purporting to act, for the members of Lodge 66.

Q. You assumed that you had authority to act for everyone who had ever signed an application card for member-

ship in the Amalgamated Association of Iron, Steel and Tin Workers; is that right?

A. That was our assumption.

Q. And you do not know whether any of the authority created by any of the members, was terminated or revoked at any time, do you?

A. Sir?

Mr. Swiren: Read the question to him, please.

(Question read.)

A. I don't believe I understand that question—the full meaning of the question.

Q. (By Mr. Swiren.) Well, let me ask the question in another form.

A. All right, sir.

Q. Do you know whether all of the people who at one time or another signed application cards of the character offered in evidence, continued to want Lodge No. 66 to represent them and act for them?

A. They had made no express desire or wish that I know of, to the contrary.

Q. Were you in court at the trial before the Circuit Court when your counsel announced that 35 or 40 members 1142 had deserted the union, and the union did not want to act for them and represent them in that case?

A. I don't remember that statement exactly in that way, although there was a statement something to that effect.

I would not say it was that statement.

Q. Not in those words?

A. No.

Q. But that in substance?

A. There was something along that line, yes.

Q. And do you regard the men to whom your counsel referred, as still being members of lodge No. 66?

A. I don't believe that I recall the answer at that time. I believe there was some question—

Q. Well, do you regard those men to whom your counsel referred, in making that statement, as still being members of Lodge No. 66?

A. There has been no action taken by the Lodge, or anything like that; it has not been brought up, to my knowledge.

Q. Well, do you still regard them as members?

A. Yes, sir.

Q. And you think you are still authorized to act on their

behalf in bargaining with the Fansteel Metallurgical Corporation, is that right?

Mr. Walsh: I object to that, if the Examiner please. That calls for a conclusion of law, I believe. The witness
1143 is not qualified to answer that question.

Trial Examiner Dudley: It calls for a conclusion, but I will let it go in for whatever bearing it may have, subject to Mr. Walsh's objection and exception.

Mr. Swiren: Will you answer the question.

A. Not until there has been a meeting of the members. Their status down there, I couldn't explain. This is something new to me, and just what stand would be taken upon it, I couldn't say.

Q. (By Mr. Swiren.) Well, let me ask you this: you do not want to represent anybody who does not want you to act for them, do you?

A. I—

Mr. Walsh: Just a moment. That is objected to as immaterial, and as not proper cross-examination of this witness.

Mr. Swiren: Oh, I submit that the question is perfecty proper.

Trial Examiner Dudley: I will admit it.

Mr. Swiren: What is your answer?

The Witness: Read that question to me again, please.

(The question was read.)

A. Well, now, that is kind of a hard question to answer. I can't say yes or no to that.

Q. (By Mr. Swiren.) It does not seem so hard to me. Is it hard for you to answer?

1144 A. I can answer the question in my own way, if you will let me do that.

Q. Well—

A. (Continuing.) But not saying yes or no; I can't answer it in that way.

Q. Answer the question yes or no, first, and then if you desire to add an explanation, you may add it. But let us have a yes or no answer first to the question.

Trial Examiner Dudley: If you can give a yes or no answer, of course, Mr. Swanson.

The Witness: Will you read me the question again, please?

(The question was again read.)

The Witness: Not—

Mr. Walsh: Now, your Honor that calls for a rather more

involved answer, I think, than just a plain yes or no answer. I believe it is the theory of the National Labor Relations Act, that the majority of employes can act for all of the employes.

Mr. Swiren: I am only talking with respect to the specific authority.

Mr. Walsh: Well, now—

Mr. Swiren: I am not talking—

Mr. Walsh: That is a matter of law. The majority has the right to act for all of them.

1145 Mr. Swiren: I am not necessarily talking about the—

Mr. Walsh: (Continuing)—so that the question is not quite as simple as counsel would lead the witness to believe.

Mr. Swiren: It is a question of direct authority, and not the authority granted by the act.

Mr. Walsh: In many of these cases, the minority does not care to be represented by the majority. In fact, when elections are held, many of them vote to the contrary.

Mr. Swiren: What we are inquiring about is, using men who do not want to be represented by these people, to make up that alleged majority.

Mr. Walsh: Then I think the question should more properly be reframed.

Trial Examiner Dudley: Mr. Swanson, if you can answer the question that has been put to you yes or no, why, you may do so; and if you cannot answer it yes or no, answer it as best you can.

The Witness: Will you give me the question again?

Trial Examiner Dudley: The reporter will read it.

(The question was again read.)

A. Well, no, sir, not unless I felt it was for their own good—the majority of those involved, for their own good.

Q. (By Mr. Swiren.) If a majority of the men and women involved did not want you to act, but you thought it was for their own good, you would want to act for them

1146 anyhow; is that it?

Mr. Walsh: That is objected to.

A. I don't believe that the word "majority" was mentioned before.

Q. (By Mr. Swiren.) I am mentioning it now.

A. Well, that is different now. If the majority said no, why, then, I would say that I would not wish to do so.

Q. Now, tell me, are there any of the people whose names

you carry on your membership lists who have now gone back to work, and are at work at the Fansteel Metallurgical Corporation?

A. I believe there is.

Q. Do you know how many?

A. I couldn't say at this time.

Q. Approximately?

A. I couldn't say approximately, either, for this reason, that there was a lot of young ladies who belonged to the union, and I didn't know at the time how many, or how many have gone back; I couldn't say at this time.

Q. Well, approximately?

A. It would be hard to give a guess.

Q. Approximately, so far as you know.

1147 A. Well, the last I knew of those who had gone back, at the time I knew of it, it would be about, say, thirty or thirty five, at the most, that I knew of, that I could safely say.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment, Mr. Swanson.

The Witness: Yes, sir.

Trial Examiner Dudley: Let me see Board's Exhibit No. 27, please.

Mr. Walsh: That is the stenographic report; the yellow sheet.

Trial Examiner Dudley: Yes.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Swanson, referring to Board's Exhibit No. 27, was that stenographic report prepared by the stenographer in the office of the company at the time you held the second meeting?

A. That was prepared—as far as my knowledge goes, this was prepared, or was supposed to have been prepared by the stenographer afterwards, after the meeting; and they promised to forward this to me, and it came in a letter to me personally.

Q. Did she take down notes at the time you had the meeting?

A. She took down notes at both meetings,—yes sir.

Q. As far as you know, does that include everything

1148 that was said at that meeting?

A. Let me see it again please. Well, as far as direct statements from one party to another are concerned, I think it does, to my knowledge. There might have been conversation from one party to another, on the management side, or on our side, our committee that is not in there, but I wouldn't say for sure; I don't recall exactly. I believe that there was something mentioned to me by one of the men, but whether that is all in there or not, I wouldn't say for sure.

Q. But as far as—

A. (Continuing.) But I think the substance of the different statements that were made—I believe that is in this record. There was conversation by one of the members of the management, before we came in.

Q. But as far as you know that includes all of the conversation that occurred between the management and the union representative, does it?

A. To the best of my knowledge now, it does, yes, sir.

Q. Now, referring back to the first meeting on March 3rd: Did the management enter into any discussion at that time with regard to the merits of the proposal, or the reasons for any prospective acceptance or rejection of that proposal?

The Witness: Will you give me that again?

Trial Examiner Dudley: The reporter will read it.

(The question was read.)

1149 A. No; at that time the only comment on the proposal I believe was what I mentioned before, that Mr. Aitchison addressed Mr. Anselm, I believe it was, and said, "It is about the same as before" or something to that effect; and that there would be no discussion. They did not want to enter into any discussion, because when we requested an answer in writing, they apparently took the attitude—they took advantage of the situation and did not wish to discuss it any further there. Our intention was to bring an answer back in writing, so that it could be explained fully to the members, as to the proposal; but they said they didn't wish to discuss it any further, because we had asked for an answer in writing and as long as I had put the proposition that way—although I explained fully that we came there to discuss it—of course I could not deny them that wish.

Trial Examiner Dudley: Are there any further questions?

Mr. Swiren: Yes.

Q. (By Mr. Swiren.) After you received the reply to

your first proposal, the reply of the company dated March 3rd, 1937, you made your second call on the management.

A. Yes.

Q. On March 5th,—is that right?

A. Somewhere around there, yes, sir.

Q. Did you read the reply that was made by the management?

A. Yes, sir.

1150 Q. Under date of March 3rd.

A. Yes, sir.

Q. Did you read the portion which says, "Immediately following the violent seizure of our plant, we announced the discharge of you and the others who participated in such action with you"?

Did you read that?

A. I read the entire contents of the letter, yes, sir.

Q. And did you say anything about that discharge, when you made your second call?

A. I don't believe that there was any discussion there. I don't remember whether there was any discussion about discharge at that time or not. We came in there, as I told you—

Q. You were the spokesman.

A. Yes, sir.

Q. For your group.

A. I believe—well,—

Q. Did you say anything about your having been discharged, or the discharge of the men who had seized and held buildings 3 and 5 with you?

A. I don't believe I did, sir.

Q. You did not say that your discharge was unwarranted, or anything of that effect, did you?

A. I couldn't recall.

1151 Q. Did you say anything at all about the fact that you had not been called back to work?

A. I believe that transcript there covers the conversation pretty generally.

Q. Well, I do not see anything to that effect in this transcript, that you have produced, so I take it that nothing like that was said. Is that right?

Mr. Walsh: Which are you referring to now, the meeting of March 3rd or the meeting of March 5th?

Mr. Swiren: I am not talking about the March 5th meeting.

Mr. Walsh: Well, that transcript is of the March 5th meeting.

Mr. Swiren: How is that?

Mr. Walsh: I say that is the March 5th meeting; that transcript is of the March 5th meeting.

Mr. Swiren: Just a moment. That is what I am talking about.

Mr. Walsh: Well, then, do you want the transcript? I presume it contains everything.

Mr. Swiren: I presume that, too.

Q. (By Mr. Swiren.) Are you and I clear about that now, Mr. Swanson?

A. Well, that is the general nature of it, yes.

Q. That is an accurate transcript, so far as you know?

1152 A. Yes, sir, I couldn't deny it at this time.

Q. Now, at the first meeting on March 3rd, did you say anything about the discharge of you and the others who participated in the seizure and retention of Buildings 3 and 5?

A. I couldn't recall whether there was anything mentioned about that at that time or not. I don't believe that there was; I don't believe there was a very general discussion, outside of the fact that we asked the management to consider these preliminary negotiations, that we would like to present these preliminary negotiations, and we asked, or said we would like to have an answer in writing.

That is as far as I can remember now, although there might have been something said by somebody else.

Q. But you did not, as spokesman for your group, say anything about the discharge that I have referred to, did you?

A. Well, the exact words that I used when I came in, and what I said at the time, or when I was leaving,—I don't remember that.

Q. I did not ask you that—

A. Well, I might have stated that, when I addressed Mr. Aitchison. I don't know. You refer to the—if you have a transcript of that meeting here, maybe you can bring that out. I couldn't say.

Q. I am trying to get at the subject matter of the discharge of you and these others who seized the plant
1153 and held it. That discharge was made on the evening of February 17th, the one we are talking about; is that right?

A. Well, the purpose of this visit here was strictly for negotiations, Mr. Swiren.

Q. Yes. Did you mention, discuss or raise any question about that discharge of the evening of February 17th, of yourself and the others who had participated in seizing and holding the buildings?

A. The discussion—

Q. Mr. Swiren: I submit to the Examiner that we have had sufficient mention of the fact, so that this witness can answer this question yes or no, or that he does not remember, if he does not remember. But we ought to have a direct answer to that question.

Trial Examiner Dudley: I think, Mr. Swiren, the witness answered my question to the effect that nothing happened in the line of conversation between the management and the men, outside of—

Mr. Swiren: This is the first meeting.

Trial Examiner Dudley: Well, at the first meeting, outside of the presentation of the proposal, and the reply.

Mr. Swiren: Then the answer ought to be a direct "no". If that is correct, it ought to be a direct "no", and nothing else.

Mr. Walsh: I submit, if the Examiner please, that
1154 this line of inquiry is hardly within the pale of the things covered on the direct examination.

Trial Examiner Dudley: Yes, Mr. Swiren has gone beyond the subject matter of the direct.

Mr. Swiren: Oh, I do not think I have gone beyond it at all, Mr. Examiner. This is just going to the propriety of negotiations by people who were discharged for seizing the plant. I think it is perfectly proper.

Q. (By Trial Examiner Dudley.) Mr. Swanson, do you recall any conversation between any representatives of the management and any representatives of the union, at the March 3rd meeting, regarding the discharge of the employees, or the seizure of the buildings, or any matters relating to such events?

A. No, sir.

Trial Examiner Dudley: Is that what you want to know?

Mr. Swiren: No.

Q. (By Mr. Swiren.) Did I understand your answer to the Examiner's question to be "No"?

A. "No."

Q. And is your answer the same with respect to the mat-

ter of reinstating men who had been discharged for seizing and holding Buildings 3 and 5?

A. Yes.

Q. That was also not a subject of discussion; is that right?

A. The management did not wish to discuss it at that
1155 time, Mr. Swiren.

Q. And you did not discuss it, or say anything about it, did you?

A. No, sir—that is, not to my knowledge, that I can remember at this time.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Harold Dreyer. This witness has not been sworn, if the Examiner please.

HAROLD DREYER, called as a witness of the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Harold Dreyer?

The Witness: Yes, sir.

Mr. Collins: Were you subpoenaed to appear here before the Examiner today?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like to claim the witness' exemption, under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

1156 Q. (By Mr. Walsh.) Mr. Dreyer, will you state your address?

A. 323 McKinley, Waukegan, Illinois.

Q. How long have you been employed by the Fansteel Metallurgical Corporation?

A. Between nine and ten years.

Q. What job do you hold down there?

A. I hold a job as laborer; piecework job.

Q. In what department?
A. In Department 3, of the Contact Department.
Q. What do you do?
A. I cut, grind, crown and polish.
Q. Contact points?
A. Yes, sir.
Q. Tungsten?
A. Tungsten.
Q. Were you a member of the committee which called upon the management on March 3rd, relative to certain negotiations?
A. Yes, sir,—I believe it was the third.
Q. Do you have a copy of the proposal that was submitted at that time?
A. I think I have it, although I am not sure.
Q. Will you look and see if you can find that copy.
A. I will.
Q. You heard Mr. Swanson's testimony here about those meetings, did you not?
1157 A. Yes, sir.
Q. Is there anything that you can add to his testimony?
A. Well, I don't know.
Q. Well, then, supposing you just tell the Examiner in your own way what happened at the meeting of March 3rd?
A. Well, we went into the office, and we waited there some time before we were admitted into Mr. Aitchison's office. While we was up there, I had expected to negotiate for union recognition, but there was no conversation at all. They agreed to—after Mr. Aitchison, Mr. Anselm and Dr. Driggs had read the paper that was handed to them, they waited quite a few minutes before they answered, and then they decided to do it in writing.
Q. And they did send you a reply in writing, did they?
A. Yes, sir.
Q. I will hand you what has been marked Board's Exhibit No. 26, and ask you if that is the reply to which you refer?
A. Yes, sir, I believe it is.
Q. Now, did you have a further meeting with the management of the Fansteel Company?
A. Yes, sir.
Q. A few days later?
A. Yes.
Q. What happened at that meeting?

A. Well, we decided to take our attorney with us,
1158 but when we went to the information window and told them that the committee wished—with our representative, and told them that the committee wished to speak to Mr. Aitchison, why,—they held this meeting downstairs, in a different room; and Mr. Anselm came to the door, to permit us to go in, and we started to go in, but they didn't understand, I guess, that our attorney was with us, or our representative was there; and so he immediately closed the door in our faces, and said we had to get rid of him, to get him off the property, or off the premises. So he waited, our attorney waited, our attorney waited out in the car; and then later he came to the door and permitted us to come in.

Q. What happened at that meeting?

A. Well, at that meeting there was very little said.

Q. I will hand you Board's Exhibit No. 27 which is the stenographic transcript of what took place at that meeting, and I will ask you to read that, and testify as to whether anything else took place there?

A. That is what took place there, yes, sir.

Q. Nothing else happened but what is recorded on this paper; is that right?

A. I don't think there was anything else happened, no, sir.

Q. And at that meeting, you submitted a proposal in writing, did you?

A. Yes, sir.

1159 Q. And you received a letter from the company in answer to that proposal?

A. Yes, sir.

Q. I will hand you Board's Exhibit No. 28 and ask you if that is the letter which you received, in answer to that proposal?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) At the first meeting, Mr. Swanson presented the paper that you had prepared, and told the members of the management that he wanted a reply in writing so that he could submit it to the lodge; is that right?

A. Yes, sir.

Q. And Mr. Aitchison stated that they would comply with that request, and give you a reply in writing; is that right?

A. Yes, sir.

Q. Now, at that meeting, did you say anything, or did anyone of the committee say anything with respect to the discharge of you and the others who had on February 17th taken over and held Buildings 3 and 5?

A. No, sir, I don't remember of anything being said about that there at that time.

Q. Or was anything said at that time by you or your group, your committee, with reference to any mention,
1160 or any request made to you and the others who had been so discharged for taking over Buildings 3 and 5, to return to work, or be reinstated?

A. No, sir, I don't remember anything like that.

Q. Was there any discussion of that subject at all?

A. No, sir.

Q. Were either of those two subjects mentioned by you or your associates on the committee, at the meeting of March 5th?

A. I don't remember exactly what was in the paper, but I would recognize it if I seen it.

Q. No, I mean verbally. You did not say anything about either of those two subjects verbally, did you?

A. No.

Q. All of the men who appeared with you at the meeting of March 3rd, were men who had participated—your whole committee was made up of men who had participated in the seizure and retention of Buildings 3 and 5, during the period February 17th to February 26th; is that right?

A. Yes, sir.

Q. And that was also true of your entire committee on the occasion of the meeting of March 5th; is that right?

A. Yes, sir, it was the same committee.

Q. The same committee.

A. Yes.

Q. They were men who had engaged in taking over
1161 and holding the two buildings—

A. Yes, sir.

Q. During the period mentioned in February; is that right?

A. They were in the buildings.

Q. They were in the buildings.

A. That is right.
Mr. Swiren: All right.
Trial Examiner Dudley: Is that all?
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down; thank you.
(Witness excused.)
Mr. Walsh: Frank Latz. This witness has not been sworn, your Honor.

FRANK LATZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Frank Latz?
The Witness: That is right.
Mr. Collins: You were subpoenaed to appear here before the Examiner this afternoon, were you?
The Witness: No.
Mr. Collins: Didn't you receive a subpoena?
The Witness: No.
Mr. Walsh: We will withdraw the witness then, your Honor.
1162 Mr. Collins: We will withdraw you for the present, Mr. Latz,—or rather Mr. Walsh will.
Mr. Swiren: What prosecution are you afraid of, Mr. Walsh?
Mr. Walsh: I haven't any idea, but I am not taking any chances.
(Witness excused.)
Mr. Walsh: At this time, if the Examiner please, I would like to put in the copy of the charter that we had transcribed, instead of submitting the entire charter.
Trial Examiner Dudley: Is there any objection, Mr. Swiren, to admitting into evidence a copy of the charter?
Mr. Swiren: If we objected to the charter—this is merely the substitution of a copy, as I understand it, for the original.
Mr. Walsh: Yes.
Mr. Swiren: I do not remember whether we objected or not. If we did, then the record shows it, and if we did not—
Mr. Keele: We did not object. We permitted the exhibit to go in.

Mr. Swiren: We certainly do not object to the substitution of a copy, for the bulky framed instrument.

Trial Examiner Dudley: No, you did not object at that time.

Mr. Swiren: Very well, then.

1163 Trial Examiner Dudley: The copy may be admitted in evidence. I think the exhibit number is Board's Exhibit 16.

(The copy referred to was received in evidence and marked "BOARD'S EXHIBIT NO. 16.")

Mr. Walsh: Mr. Harris. Will you swear the witness, if the Examiner please.

JOHN FAY HARRIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Will you state your full name, please.

A. John Fay Harris.

Q. Where do you live, Mr. Harris?

A. 49 June Terrace, Lake Forest, Illinois.

Q. (By Mr. Swiren.) Is the name Harris?

A. Harris.

Q. (By Mr. Walsh.) What is your business?

A. I am superintendent of the Veterans' Relief, for Lake County.

Q. Mr. Harris, during the month of March, did you make any efforts toward composing the differences between the Fansteel Metallurgical Corporation and its employees?

A. I did.

Q. Will you tell the Examiner what efforts you made?

1164 A. I dictated a letter to my stenographer, making certain offerings, which were acceptable to the strikers, in an effort to get the strikers and the Fansteel Metallurgical Company together, to see if they could not solve their differences over an arbitration table?

Q. Did you send that letter to the Fansteel Company?

A. I did.

Q. What reply did you receive from them?

A. I received no reply.

Mr. Walsh: Mr. Reporter, will you mark this document Board's Exhibit 29 for identification please.

(The document referred to was marked "Board's Exhibit No. 29", for identification.)

Mr. Walsh: If the Examiner please, I will read what has just been marked Board's Exhibit No. 29 for identification.

Mr. Keele: Just a moment.

Mr. Swiren: We object.

Mr. Keele: We object to the reading of it at this time.

Mr. Swiren: We do not want the letter read until we have had an opportunity to be heard. You are offering the letter in evidence, and we have never heard of the letter before; and there are other matters in connection with the subject matter of the offer that ought to be considered by the Examiner before it is admitted.

Mr. Walsh: I will offer it and let the Examiner rule
1165 on the objection.

Mr. Swiren: All right. We would like to ask a question or two of the witness before we make our complete objection to the exhibit that is offered.

Mr. Keele: Concerning the exhibit.

Mr. Swiren: Concerning the exhibit, of course.

Trial Examiner Dudley: Let me see it, please.

Mr. Swiren: Yes.

Mr. Walsh: Excuse me!

Mr. Swiren: You are making your offer now, I take it?

Mr. Walsh: Yes.

Mr. Swiren: We would like leave to ask some questions of the witness with respect to the exhibit.

Mr. Keele: That is, not as to its contents, if the Examiner please, but merely with reference to the sending of it.

Trial Examiner Dudley: Just what is it you wish to do, Mr. Keele?

Mr. Keele: We have had no proof of what this man did, and we should like to ask him if he mailed the letter.

Mr. Swiren: And we would like to ask him—

Trial Examiner Dudley: He testified he did.

Mr. Walsh: That he mailed it himself, personally.

Trial Examiner Dudley: What else do you want to ask him?

Mr. Keele: Well, let us find out. His statement of
1166 writing the letter, is one thing, but we did not get the letter, and we would like to find out why we did not get it.

Trial Examiner Dudley: Well,—

The Witness: Would you like me to explain the procedure—

Mr. Keele: Just a moment. I am not addressing you; I am addressing myself to the Examiner.

The Witness: O. K.

Mr. Keele: We would like to know what he did.

Trial Examiner Dudley: Mr. Reporter—

Mr. Keele: To lay the foundation.

Trial Examiner Dudley: Mr. Reporter, can you go back to the opening testimony of the witness about the letter, and read me what he did say?

(The record was read as above recorded.)

Trial Examiner Dudley: Mr. Walsh, do you want to lay a better foundation, as to how he sent it, who put it in the mail, and so forth?

Q. (By Mr. Walsh.) Mr. Harris, did you personally put that letter in the mail?

A. I personally handed the letter to the postmaster in North Chicago, in the presence of three witnesses.

Q. And those witnesses were who?

A. Why, Carl Swanson; Warner—I don't know his first name; and Crump—I don't know his first name.

1167 Possibly, to save all of these legal difficulties, it might be advisable for me to tell just exactly how the letter was handled from the time it was dictated.

Q. All right. Just tell us.

A. The letter was dictated by me to my stenographer, and was handed to me for my signature with the carbon copies still in it—there were two carbon copies. We carried the letter, and the two carbon copies, over here to the courthouse, and had Miss Efinger, Miss Florence Efinger, in the County Court—or in the County Clerk's Office, certify to the fact that they were true and correct carbon copies of the letter. I have a copy in my files, and a copy was given to Roy Swanson, and the original letter was placed in an envelope by me, and carried by me down to North Chicago, and handed to the postmaster in North Chicago at about a quarter to three on the day the letter was written; and we were advised that the letter would reach the Fansteel office not later than 3:15.

Whether that letter ever reached there or not, is a matter for the postal authorities to determine.

Mr. Walsh: I offer the letter in evidence.

Mr. Swiren: We object.

Mr. Keele: It still is not sufficient.

Mr. Swiren: There is an additional ground.

Mr. Keele: He has not shown whether he stamped the letter; he has not shown where he handed it to the post-
1168 master, or what the postmaster did with it after it was handed to him. He might have met the postmaster anywhere, and handed him a lot of things. We are making serious inquiry because the letter has not reached us, and we will present testimony to that effect.

Mr. Swiren: There are additional grounds also, if the Examiner please. This man writes a letter and says that he offers his services as mediator. That does not have any pertinency at all. He is not purporting to act for either of the parties. The fact of whether this man, or any other man, seeks to interject himself into a situation of this sort as a mediator, certainly does not have any pertinency to the issues in this case.

Trial Examiner Dudley: Well, now—

Mr. Swiren: And furthermore—pardon me, your Honor?

Trial Examiner Dudley: I will admit the letter, and the attorneys for respondent may ask such questions as they wish on cross examination, about stamping, addressing, where the postmaster was at the time it was handed to him, and such matters.

(The document referred to was received in evidence, and marked "BOARD'S EXHIBIT 29", Witness Harris.)

Mr. Walsh: I will read, Mr. Harris, the entire letter, Board's Exhibit No. 29, now admitted in evidence.

"March 18, 1937"—

1169 Mr. Swiren: Just a moment. What is the purpose of reading it, counsel, may I inquire, if the letter has now been received in evidence.

Mr. Walsh: Well,—

The Witness: It is a matter of actual fact, as to what became of the letter.

Mr. Swiren: Just a moment.

The Witness: I wrote the letter that he is going to read.

Mr. Swiren: Just a moment, Mr. Witness. When we address counsel, or the Examiner, we would prefer not to get a reply from you.

Trial Examiner Dudley: Do you object to counsel reading the letter, Mr. Swiren?

Mr. Swiren: Yes. I do not know what the purpose is. If he will tell us what the purpose is, perhaps we will not object.

Mr. Walsh: Well, I presume I ought to tell counsel—

Mr. Swiren: If you read all of the exhibits, after they have been received, you will just be encumbering the record.

Mr. Walsh: Well, if you object, since the Examiner has admitted it in evidence, we will just waive the reading of it.

Mr. Keele: Just a moment.

1170 The Witness: Well, I believe I am entitled—

Mr. Keele: We will withdraw the objection.

Mr. Swiren: Yes, we will withdraw the objection, Mr. Examiner.

The Witness: I think I am entitled to have the letter read.

Mr. Swiren: We withdraw the objection, if the Examiner please.

Mr. Keele: We have just learned of the gentleman's disability, so we will withdraw the objection, without a speech.

1171 Mr. Walsh: The letter is as follows:

"March 18th, 1937.

"Fansteel Metallurgical Corporation,
North Chicago, Illinois.
Attention of Mr. R. J. Aitchison.

Dear Sir:

"A properly authorized group of members of Local #66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, have requested me, in the best interest of all concerned, to present the following requests to you, for your consideration.

"No. 1 The recognition of Lodge No. 66 Amalgamated Association of Iron, Steel and Tin Workers of North America, as the bargaining agency for its members.

"No. 2 That no discrimination be shown to any member of the above mentioned organization, who has participated in any way in the dispute between the above mentioned organization, and the Fansteel Corporation.

"No. 3 That the Fansteel Corporation select a committee of its own choosing, to meet with a committee selected by Local No. 66 Amalgamated Association of Iron, Steel and Tin Workers of North America, of its members who have been employed by the Fansteel Corporation to discuss and arbitrate mutual differences.

"If a favorable answer is received to the above re-
1172 quests by 5 p. m. Monday, March 22nd, 1937, or at any time prior to that time, Local No. 66 Amalgamated As-

sociation of Iron, Steel and Tin Workers of North America, agree to remove all pickets from the vicinity of the Fansteel Corporation, providing that during the period of negotiations, the Fansteel Corporation agrees not to hire any new employees for any purpose whatever.

"My office in this matter is that of mediator, whose desire is to bring together the two parties concerned in this dispute, so that no undue hardship shall be worked upon either of the parties concerned, or the state and nation.

Respectfully yours,

John F. Harris,
Superintendent."

Then at the bottom of the letter it says:

"State of Illinois, }
County of Cook. } ss.

"I, Florence Efinger, notary public in and for Lake County, Illinois, hereby certify the foregoing to be a true and perfect carbon copy of an original letter, signed by John F. Harris, Superintendent, Lake County Veterans Relief Commission, dated March 18, 1937, and addressed to Fansteel Metallurgical Corporation, North Chicago, Illinois, attention Mr. R. J. Aitchison.

"In witness whereof I hereunto set my hand and notarial seal at Waukegan, Illinois, this 18th day of March, 1937.
1173

"Florence Efinger
"Notary Public."

Q. (By Mr. Walsh) Is that the letter which you have just described to us, Mr. Harris?

A. To the best of my memory, it is. I have my copy in my files, and if it is necessary, it can be checked word for word with that; but I am satisfied that this is the letter that I wrote.

Mr. Walsh: All right. You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Mr. Harris, you stated that you are superintendent of Veterans Relief in Lake County.

A. That is correct.

Q. Is that a public office that you hold?

A. It is.

Q. Under what governmental subdivision, or division?

A. My particular office—

Q. Is it a county office?

A. My particular office is an office ordained or prescribed by the statutes of the State of Illinois, and maintained by the County of Lake for the purpose of administering relief to indigent veterans, in the County of Lake.

Q. I see. In connections with the subject matter of your letter, you were desirous of being helpful if you could as a mediator between the parties; is that right?

1174 A. My first and immediate concern was an effort to preclude the possibility—or I will change that from "possibility", because it had already commenced; but my first concern was to obviate the necessity of any number of veterans who would legally be entitled to relief, having to obtain relief from public funds, when they possibly might be working, and supporting themselves.

Q. And that thought occurred to you about the 18th of March, when you sent that letter; is that right?

A. No, sir, that thought had occurred to me before the 18th of March.

Q. Well, did it occur to you during the period from February 17th to February the 26th, shall we say?

A. It did not.

Q. Who asked you to communicate with the Fansteel Metallurgical Corporation?

A. It was my own personal idea.

Q. And in execution of that idea, did you get in touch with someone at the company before you prepared that letter?

A. I did not.

Q. Did you get in touch with someone representing the men who had seized the plant of the Fansteel Company and held it against court orders, and been discharged by reason of that conduct?

A. I had no knowledge, definite or otherwise, as to
1175 the charges concerning these men; but there were a certain number of individuals, veterans here, who had been employed in Fansteel, and, according to the best newspaper and radio knowledge obtainable, had been discharged, who were compelled to apply for relief, through my office.

Q. I see.

A. (Continuing) It was necessary for me to administer the relief; and in the full conception of my duties as superin-

tendent of relief, I am doing a much better job by keeping men off relief, by keeping them in private employment, occupied, than I am in merely handing out groceries.

Q. Now, that same source of information, the newspapers, and also the other source of information which you mentioned, the radio, also conveyed to you information as to the activities of these men which led up to their discharge, did they not?

A. Absolutely.

Q. Yes.

A. Absolutely.

Q. And then you communicated with some of the men; is that right?

A. I did not.

Q. Well—

A. Not directly, that is, in the sense that you are trying to suggest.

1176 Q. Well, in any way.

A. The men came to my office, to apply for relief.

Q. All right. Who came there?

A. I cannot give you the names of men who are veterans, because the statutes of the State of Illinois preclude the possibility of the names of veterans who are obliged to obtain public relief, being mentioned.

Q. Well, did you talk to anyone with respect to the position of those men, before you outlined what you thought their position was in your letter of March 18th?

A. Please explain what you are driving at.

Mr. Swiren: Read him the question please, Mr. Reporter.

(The question was read.)

The Witness: I would like to have a clearer definition of what you mean by "the position".

Q. (By Mr. Swiren) You outlined what you thought the position of the men who had been discharged, was, did you not?

A. I didn't make any outline, no. Nothing in my letter said that there was any outline as to what their position was.

Q. You said that Lodge 66, or that some group had agreed to certain things, and asked you to pass them on to the Fansteel Metallurgical Corporation for its consideration; that is right, is it not?

A. As far as the "group" is concerned, that is correct.

1177 Q. That is right.

A. A group.

Q. Tell us who was in the group that came to you and asked you to pass on that information?

A. On the basis of the same answer that I had to give you before, I cannot give you the names of the group.

Q. I am not asking you who got relief. I am asking you who made the request.

A. (No answer.)

Mr. Swiren: I ask that the Examiner instruct the witness to answer the question.

Q. (By Trial Examiner Dudley) Do you remember who it was?

A. Yes, Mr. Examiner, I remember definitely who it was, but by the same token, I could not say that there were six or seven men who came up to ask this, and that one man, mentioning his name, did not get any relief.

Mr. Swiren: I did not ask you about who got relief, and I am not interested in relief. I am interested only in the question that I have asked.

Mr. Walsh: Well now, I think—

Mr. Swiren: Does the witness still refuse to answer the question?

Mr. Keele: If this man refuses to testify and tell the whole truth, then I think all of his testimony ought to be stricken from the record.

1178 Mr. Swiren: We are certainly entitled to have the question answered, and I now ask that the witness be instructed to answer the question.

Trial Examiner Dudley: I do not see that it is very pertinent to the inquiry.

Mr. Swiren: Oh, yes, it certainly is. Here is a man who injects himself into this situation, and we are entitled to know how, why, and by whose authority.

The Witness: I will answer the question: to the best of my knowledge—

Mr. Swiren: Now, let us not have any speech, Mr. Witness. I have made a request of the Examiner. I am not addressing myself to you.

Mr. Keele: He can get the absolution that the Act gives him, you know.

Trial Examiner Dudley: Read the question, please, Mr. Reporter.

(The question was read.)

A. I stated that nobody came and asked me to pass on this information.

Mr. Swiren: Just a moment. I am addressing my remarks to the Examiner.

The Witness: Well, he is reading the question to me. The Examiner told me to answer the question, and he is reading the question to me. Is there any objection to that?

1179 Trial Examiner Dudley: Just a moment. Does the letter show the authority to speak for the union?

Mr. Swiren: He says a group came to him, and asked him—

Mr. Keele: A properly authorized group.

Mr. Swiren: "A properly authorized group of members of Local No. 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, have requested me, in the best interest of all concerned, to present the following request to you for your consideration."

I persist in my motion that the entire testimony of the witness, and the exhibit that he has identified, be stricken from the record.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley) Mr. Harris, in your letter you indicate three points which the corporation should, on your suggestion, accede to; namely, recognition of the union; no discrimination against the union; and also the selection and meeting of certain committees; and then you state that if you receive a favorable answer by Monday, March 22nd, then the union, or Lodge 66, will remove all pickets from the vicinity of the corporation; which brings up your authority to make a definite statement; and the question of your authority might well have been in the mind of the corporation, if and when it received your letter, and made its representatives wonder as to whether or not they could rely on it.

1180 The Witness: Mr. Examiner, would it be possible to explain the situation off the record, and then put it on the record if you see fit to do so, as to just exactly how this whole proposition of my entering into the picture, arose, and the concessions I got from the men, in order to have something that we believed the company would be willing to consider, and use as a basis for further negotiations?

Trial Examiner Dudley: Well—

Mr. Swiren: Oh, no; we object to any testimony off the record.

Trial Examiner Dudley: I think—

Mr. Swiren: Here is a simple question, requiring a simple answer.

Q. (By Trial Examiner Dudley) Mr. Harris, did you not talk, after you began your negotiations, with quite a number of the members of the union?

A. Yes, sir.

Q. Covering these veterans?

A. Yes, sir, I said, six or seven, and as I recall it, I can only recall the name of one who was not a veteran.

Q. You see, as a mediator, you are interested more in bringing together the employer and the employees, and although your impetus in starting might have been motivated by your interest in the veterans, nevertheless, once you got started, and apparently discussed it with the union, then
1181 your effort was to bring together the employer and the union members whether they were veterans or not.

A. That is true.

Q. So in telling us who the members or who the officials of the union were, whom you contacted, would not indicate at all what men were veterans, or what men applied for relief.

A. Well, as near as I can recall it—well, I will accept the responsibility of placing the veterans' names in the record.

Q. You need not indicate those who were veterans, or those who were applying for relief.

A. There is no indication, then, as to whether they are veterans or not?

Q. No.

A. As near as I can recollect, there was Crump—I don't know his first name; Warner; and—I don't recall the names of the rest of the men. There were on several occasions as many as six or seven in the groups that came up to the office to discuss whether or not a letter such as this would have any effect.

Q. And did those men whom you have named, and other men associated with them, authorize you to state that the union would remove pickets from the vicinity of the plant if a favorable reply was received to your letter?

A. The original draft of that letter was carried back
1182 to the union as a group for discussion and approval, and the three men concerned carried the letter back and

notified me that it had been acceptable to Local No. 66, and that they wished me to write this letter.

It was not that I had any personal desire of acting as a mediator. My function in the matter was purely to attempt to bring the strikers and the management together, so that they could make an attempt to adjust their differences.

Trial Examiner Dudley: Yes, I understand that. Is that what you wanted to find out, Mr. Swiren?

Mr. Swiren: That is part of the information, but I would like to get some other information.

Trial Examiner Dudley: All right. You may proceed.

Cross-Examination (Continued).

Q. (By Mr. Swiren) Do I understand then, Mr. Harris, that you were not undertaking to act as the representative of these men?

A. I most certainly was not.

Q. You were offering your services as a mediator; is that right?

A. As a mediator to the extent of attempting to get the two factions together, so that they could work out any proposals that might be mutually satisfactory, to get these men off of the relief rolls, and keep others from going onto the relief rolls.

1183 Q. Did the Fansteel Metallurgical Corporation, or any of its officers, ask you to serve as mediator?

A. No.

Q. Did you make any calls on the officers of the Fansteel Metallurgical Corporation?

A. I did not.

Q. Personally?

A. I did not.

Q. Did you talk to any of them?

A. No.

Q. Are you familiar with the positions of mediator and conciliator in the Department of Labor of the State of Illinois?

A. It is probably unfortunate that I used the word "mediator" in the letter at the time.

Q. No, no. Just answer the question, please.

A. Yes; that is, I have a broad definite knowledge—

1184 Mr. Swiren: I ask the witness be instructed to answer my question, and not give me all of his views.

The Witness: Ask your question again.
Mr. Swiren: Read it, please.
(The question was read.)
A. Vaguely.
Q. (By Mr. Swiren) You have also heard that the United States Department of Labor maintains a department of mediation, have you not?
A. I have.
Q. Had you read anything in any of the newspapers, or had you heard over the radio, or both, to the effect that the federal and state departments had mediators and conciliators trying to work out the difficulties that arose when a group of those men seized two buildings of the Fansteel plant?
A. Yes, I heard that.
Q. And it was your thought that where they had failed, you might succeed in effecting mediation; is that correct?
A. Substantially.
Q. And on that basis, you tendered your services; is that right?
A. That is substantially correct.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: That is all, Mr. Harris; 1185 thank you very much.
(Witness excused.)
Mr. Walsh: May I suggest a short recess at this time, if the Examiner please.
Trial Examiner Dudley: I will declare a short recess at this time.
(Thereupon a short recess was taken.)
Trial Examiner Dudley: The hearing will reconvene.
Mr. Walsh: I will recall Mr. W. D. Crump. This witness has already testified, if the Examiner please.
Trial Examiner Dudley: Which Crump is this?
Mr. Walsh: W. D. Crump.

W. D. CRUMP, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) Mr. Crump, were you with Mr. Harris, Mr. Swanson, and Mr. Warner at the time the letter which has been introduced in evidence here as Board's exhibit No. 29, was delivered to the post master?

A. Yes, sir, I was.

Q. Will you explain that situation to the Examiner?

A. We had the letter—after it was notarized downstairs, Mr. Harris sealed it in an envelope, and it was taken to the post office; and we asked the post master—if I remember
1186 right, this was on a Friday, and that was the reason for wanting to get it in there that day, because the next morning was Saturday, and maybe Mr. Aitchison would not be there—we asked the postmaster if it would be delivered that day, as a registered letter; and there was a discussion at that time; and I believe the postmaster told us that if we put a special delivery stamp on it, it would be taken down and received by a quarter after three that afternoon.

So Mr. Harris turned it over to the postmaster, and the stamps were put on it, and we left. At that time it was about a quarter to three, or ten minutes to three.

Q. All right.

A. And he said that it would be delivered there in half an hour.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block) Mr. Crump, where was this post office, in which you and Mr. Harris were?

A. At North Chicago.

Q. (Continuing) The day you had this discussion about special delivery—where was it?

A. The post office?

Q. Yes.

A. North Chicago.

Q. Where is the plant of the Fansteel Company located?

1187 A. 22nd Street.
Q. How far from that post office?
A. Oh, maybe half a mile or so.
Q. It is less than that, is it not?
A. No, sir, I don't believe so.
Q. This was what time of the day?
A. Oh, between a quarter of three, and ten minutes to three, it went into the post office.
Q. No effort was made to deliver that letter to the Fansteel office, was there?
A. In person?
Q. Yes.
A. No.
Q. No one suggested that?
A. No. At the time we—
Q. I say, no one suggested that?
A. No—well, we talked it over, that we had better send it through the mail as a registered letter, registered mail, to show the receipt at the other end.
Q. You first took that letter up to the county clerk's office in Waukegan, as I understand you?
A. Yes, sir.
Q. That is how many miles from the office of the Fansteel Metallurgical Corporation?
A. About 3 miles.
1188 Q. About 3 miles.
A. Yes, sir.
Q. Well, then, when you finished your work there, you took it back to North Chicago?
A. Yes, sir.
Q. And you took it within half a mile of the office of the Fansteel Company?
A. Yes, sir.
Q. Mr. Harris was with you, was he?
A. Yes, sir.
Q. And there you had some discussion with the postmaster?
A. Yes.
Q. About the length of time that it would take to deliver that letter, if it were mailed by special delivery?
A. Well—
Q. Is that correct?
A. Only in regard to whether it would be better to send it special delivery or as registered mail.

Q. That is what I say.
A. Yes, sir.
Q. That was the discussion?
A. Yes, sir. The reason of the discussion was—
Q. Well—
A. —as to the time—

Q. Just a moment. Let us finish the other question
1189 first. You did have some discussion there?

A. Yes, sir, but the only discussion was, if we registered that letter, as to the time that it would take to be received at the Fansteel office, or if we sent it special delivery, would it be received that day; because we wanted that letter to get in there that day.

Q. Yes.
A. That was the discussion.
Q. You wanted to be sure that it was delivered that day.
A. Yes.
Q. And you were within a half a mile, or even less than that, from the building in question?
A. Yes.
Q. That is, the office of the Fansteel Company, at the time?
A. Yes, sir.
Q. And you had Mr. Harris with you?
A. Yes, sir.
Q. But it was not delivered there?
A. No, sir.
Mr. Block: That is all.
Mr. Walsh: That is all.
Q. (By Trial Examiner Dudley) How was it sent; special delivery?

A. Special delivery, as far as I recollect.

1190 Q. Was it stamped?

A. Yes, sir, the postmaster took care of that.

Trial Examiner Dudley: That is all.
(Witness excused.)
Mr. Walsh: Charles Warner, take the stand, please.
Trial Examiner Dudley: Have you been sworn?
Mr. Warner: No, sir.

CHARLES WARNER called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Charles Warner?

The Witness: Yes, sir.

Q. (By Mr. Collins) Were you just served with a subpoena to appear before the Examiner this afternoon in this proceeding?

A. Yes, sir.

Mr. Collins: On behalf of the witness, if the Examiner please, I would like to claim his exemption under Section 11, Paragraph 3 of the National Labor Relations Act. That is, I would like to claim his privilege.

Trial Examiner Dudley: The privilege allowed by the Act, is granted.

Direct Examination.

Q. (By Mr. Walsh) Mr. Warner, state your address, please.

A. Waukegan, Illinois, Rural Route No. 2.

Q. Were you in court when we were discussing this letter that Mr. Harris wrote?

1191 A. I was.

Q. Which has been identified here as Board's exhibit No. 29.

A. Yes, sir.

Q. Were you present when that letter was mailed?

A. I was.

Q. Will you just tell the Trial Examiner the circumstances surrounding the mailing of that letter?

A. After the letter was dictated and put in the envelope, we brought it to the court house, and had it certified by a notary public—the copies, that is, that they were true copies; and we took the letter then from the court house to the post office in North Chicago, and took it to the postmaster, Mr. Woodward, and told him what it was; and as I recollect it, he stamped it and told us that it would arrive at the Fansteel Products Company—or Fansteel Metallurgical Corporation, about a quarter after three.

That was about three o'clock, when we brought it in there to him.

Q. Do you recall how the letter was sent; that is, what class of postage?

A. It was special delivery, as near as I can recall it at this time.

Mr. Walsh: All right. You may inquire.

Mr. Block: No questions.

Mr. Walsh: That is all; thank you.

1192 (Witness excused.)

Mr. Walsh: Frank Latz. This witness has already been sworn, if the Examiner please, but he had not received his subpoena before.

FRANK LATZ, recalled as a witness for the National Labor Relations Board, being previously sworn, testified further as follows:

Mr. Collins: Mr. Latz, since you were here before, you have received a subpoena, have you?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, if the Examiner please, I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

Q. (By Mr. Walsh.) Mr. Latz, were you a member of the committee that called upon the management of the Fansteel Company on March 3rd?

A. I was.

Q. Will you tell the Examiner just what happened at that meeting?

A. At the time we got there?

Q. Just tell us all about it.

1193 A. We come into the office, and Carl asked the girl there—

Mr. Swiren: Talk a little louder, please.

A. (Continuing) Carl asked the girl there if we could see Mr. Aitchison, and the girl told him to wait a few moments; and then she sent us upstairs to his room, to his office, his private office up there.

Q. (By Mr. Walsh.) Who was with Mr. Aitchison when you got up there in his private office, if anyone?

A. Anselm and Driggs.

Q. And did the committee present a proposal at that time?

A. It did.

Q. And the proposal was in writing, was it?

A. It was.

Q. Was that proposal discussed between the committee and the representatives of the company?

A. I don't think it was.

Q. Did you later receive a reply from the company in writing?

A. We did.

Q. I will hand you what has been marked Board's exhibit No. 26, and ask you if that is the reply which you received to that proposal?

A. Yes, sir, it is the same.

Q. I did not hear. Is that the reply you received?

A. Yes, sir.

1194 Q. Did you later have another meeting with the company?

A. We did.

Q. Upon what date was that?

A. I think that was about the—a few days after the 1st.

Q. About March 5th, was it not?

A. About that.

Q. Did you submit a proposal to them at that time?

A. Yes, sir.

Q. Was that in writing?

A. Yes, sir.

Q. I will hand you what has been marked as Board's exhibit No. 27 here and ask you if that is a stenographic transcript of what happened at that meeting?

A. That seems to be about everything that was said there, yes, sir.

Mr. Keele: What is the answer?

Mr. Walsh: He says that seems to be about everything.

The Witness: That seems to be about everything that was said there.

Q. (By Mr. Walsh.) Then you received a reply from the company?

A. Yes, sir.

Q. I will hand you Board's exhibit No. 28 and ask you if that is the reply which you received. Is that the reply?

1195 A. Yes, sir.

Q. Do you happen to have any copy of the proposal which you submitted to the company at that time?

A. No, sir.

Mr. Walsh: You may inquire.

Mr. Keele: No cross.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Off the record if the Examiner please.

Trial Examiner Dudley: Off the record.

(Discussion off the record.)

Trial Examiner Dudley: Let the record show that the hearing is adjourned at this time, to reconvene tomorrow morning at 9:30 in this court room.

(Whereupon, at 3:30 o'clock p. m., of Tuesday, June 15th, 1937, the hearing was adjourned to Wednesday, June 16th, 1937, at the hour of 9:30 o'clock a. m. in the court room of the Lake County Circuit Court, County Court House, Waukegan, Illinois.

1201 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Wednesday, June 16, 1937.

The above-entitled matter came on for further hearing pursuant to adjournment, at 9:30 o'clock A. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, by Max Swiren, and Harold M. Keele, Suite 2525, One North LaSalle Street, Chicago, Illinois; and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of N. A.

1202 PROCEEDINGS.

Trial Examiner Dudley: The hearing will reconvene. Let us come to order.

Mr. Walsh: At this point, Mr. Examiner, I desire to withdraw what has been introduced as Board's Exhibit No. 23, and substitute a copy.

Trial Examiner Dudley: Leave is granted.

(The document previously marked "Board's Exhibit No. 23", was thereupon withdrawn, and a copy substituted therefor, marked "Board's Exhibit No. 23.")

Mr. Walsh: I now desire to offer in evidence the constitution, by-laws and declaration of principles of the National Metal Trades Association, which will be marked for identification as Board's Exhibit No. 30.

(The document referred to was marked "Board's Exhibit No. 30", for identification.)

Trial Examiner Dudley: Is there any objection, Mr. Swiren?

Mr. Swiren: We object to the offer of the by-laws on the ground first that there is no verification of the authenticity of the pamphlet counsel is offering.

Second, the president of the respondent company testified that he had not read, and is not familiar with the contents of that instrument. There is no basis therefore, for making it binding upon the respondent.

1203 In fact, the testimony of the respondent's president is that the determination and settlement of its problems rested with the management, and were not controlled, and would not be controlled by the National Metal Trades Association.

Third, even if it were binding, it has no materiality to the issues in this case, which, as we conceive them, involve the question of whether the company did or did not bargain collectively, conduct itself in accordance with the provisions of the Act, and whether or not the men alleged to have been discharged for union membership were so discharged.

I cannot see that the constitution of that Association has any materiality. I would like to know too, whether it is claimed that membership in the Association is, in and of itself, a violation of the National Labor Relations Act?

Trial Examiner Dudley: Mr. Reporter, may I see the proposed exhibit?

The Reporter: Yes, your Honor. (Handing document to the Trial Examiner.)

Trial Examiner Dudley: Mr. Walsh, is this what Mr. Abbott has delivered pursuant to his promise on the witness stand?

Mr. Walsh: Yes. They mailed it to me. I received it last night.

Trial Examiner Dudley: I will overrule the objection and admit the exhibit as testimony subject to verification.

1204 (The document referred to was received in evidence, and marked "BOARD'S EXHIBIT NO. 30".)

Trial Examiner Dudley: You may proceed.

Mr. Walsh: At the time of adjournment, yesterday, I was about to proceed with proof as to paragraph eleven, of the complaint. At that time I asked that the hearing be adjourned in order that I might segregate these men into certain groups, that they might better be classified.

However, after studying the problem, I am very much afraid there is no basis upon which we can stipulate. Therefore, I will have to call each one of these men individually.

Trial Examiner Dudley: Very well. You may proceed.

Mr. Walsh: Steve Ark.

STEVE ARK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Steve Ark?
A. Yes, sir.
Q. You were subpoenaed to appear here before the Examiner today?
A. Yes.
Mr. Collins: Mr. Examiner, on behalf of the witness, I would like to claim his constitutional privilege under Paragraph 11, Section 3, of the National Labor Relations Act.
1205 Trial Examiner Dudley: The privilege is granted to the witness.
Q. (By Mr. Walsh.) What is your address, Mr. Ark?
A. 1120 Park Avenue, North Chicago.
Q. You have been employed 13 years by the Fansteel Metallurgical Corporation?
A. Well, nearly 13; not quite.
Q. What jobs did you have down there?
A. What was that ?
Q. What was your job? Were you in the chemical department?
A. Chemical department, yes.
Q. When did you join the union?
A. In July, 1936.
Q. When did you get your last pay from the company?
A. On March 5th.
Q. 1937?
A. 1937.
Q. Did the company take up your pass?
A. Yes.
Q. They took up your pass the same day?
A. The same day.
Q. Is that right?
A. Yes.
Q. Was that at the plant?
1206 A. At the plant, when I got my check; the pay clerk took it.
Q. The pay clerk took it?
A. Yes, when he handed me my check.

Q. Did they offer to take you back?
A. No.

Mr. Swiren: That is objected to. I would like to be heard on that. It opens up a new line of inquiry now, his being asked about reinstatement.

There is no evidence of the discharge of this man. Until there is some showing of that, there is no problem of reinstatement. We take it, from the complaint, that the charge is that this man, and some of the others, were discharged because of membership in the union, and that thereafter they were not reinstated because of membership in the union.

Until there is a showing of improper discharge, there cannot be any basis for improper reinstatement, or failure to reinstate.

If this man was properly discharged, there is no possible ground on which a complaint could be made of failure to offer him a new job. I think the Board has the burden of showing first the discharge of this man, and thereafter, establishing, if it can, the basis of the discharge, and attempting to show it was a violation of the Act.

1207 Until that occurs, there is no problem of reinstatement of any kind.

Trial Examiner Dudley: I have not read your exhibits, but I got the impression from what you said when you introduced them, Mr. Swiren, that they at least had something to do with the events between February 17th and February 27th, 1937—

Mr. Swiren: That is right.

Trial Examiner Dudley: —and perhaps the discharge of the employees.

Mr. Swiren: If the government is relying upon our exhibits, then the Examiner will find that these men were discharged for taking over the plant and holding it, which of course is not authorized by the National Labor Relations Act or any other act as far as I know.

Trial Examiner Dudley: Do your exhibits show these men were discharged for that reason?

Mr. Swiren: They show the discharge of all of the men who occupied the buildings. Unless this man shows he was in the building, he would not come within that finding.

Trial Examiner Dudley: Do they likewise name the people whom the Circuit Court—

Mr. Swiren: The people named are the people who vio-

lated the injunction. We will get those, if the Examiner will bear with us for just a moment.

1208 Trial Examiner Dudley: Of course, Mr. Swiren, in your answer you do state that you discharged certain employees by reason of their alleged seizure of those buildings, and then you have gone ahead and stated your reasons for failing to offer to reinstate them.

Mr. Swiren: We are not required, as a matter of law, to take anybody back or make any offer to take anybody back who was discharged properly. We have covered the facts. We are not required to state the law in our answer. We are replying to the facts.

Mr. Walsh: As a matter of fact, the answer admits the discharge of all persons named in Paragraph 8, who are the same persons with the exception of two—

Mr. Swiren: Where is that? The only persons named in Paragraph 8 that were discharged, were the men in the building. If these men want to identify themselves as being participants, they will come within that paragraph.

Then the question to be determined by this Examiner is whether there was an improper discharge.

Trial Examiner Dudley: Are you referring to Paragraph 7?

Mr. Swiren: Yes. Even if we had admitted a discharge for proper purposes, that would still not excuse the Board from its obligation of showing an illegal discharge before it can go into the question of reinstatement.

Mr. Walsh: Well, of course we have a fundamental
1209 difference there, Mr. Swiren. It is not necessary to show any discharge, so long as the work of the employee had ceased in connection with the current labor dispute.

I think the evidence is sufficient in the record now to establish that there was a current labor dispute.

Mr. Swiren: The evidence shows that they engaged in the seizure of the plant, which is not my conception of a labor dispute. That is my conception of lawlesssness, and the court has so held.

Mr. Walsh: Well your conception of a current labor dispute and the Board's are two different things.

Mr. Swiren: I do not know of anything in the law that says that the seizure of a plant constitutes a labor dispute. Here are the original decrees and orders that were offered in evidence, and if the Examiner will bear with me, I will read the findings.

That is the only thing I know of so far—

Trial Examiner Dudley: Mr. Swiren, this can be approached by testimony of the witnesses to the effect that the company was not operating during a certain period, and they did not work during a certain period,—

Mr. Swiren: I know, but—

Trial Examiner Dudley: (Continuing) —their last pay amounted to so much and that they were not offered a position after that.

1210 I think that way, you would at least be able to get it in.

Mr. Swiren: No. I think the record has to be in one of two forms. They must either try to prove a discharge of the man if he was in the employ of the company, and then it is a question of discharge; or if he was discharged as they claim in their complaint, Paragraph 11, and there was a failure to reinstate, they can rely on that.

But they cannot shift from one to the other. They cannot shift into the reinstatement without showing a discharge.

Trial Examiner Dudley: Oh, yes.

Mr. Swiren: There cannot be any question of reinstatement before a man is let out.

Trial Examiner Dudley: Well, you can have a question of discrimination as to discharge or reinstatement, after a strike, a lockout, or a close-down on account of lack of business.

Mr. Swiren: I think the question arises first as to the man's discharge. I think they must show a discharge before there can be any claim that the man should have been taken back for any reason.

Trial Examnier Dudley: I think the Act, and the decisions of the Board, are clear that there can be discrimination in reemployment, regardless of the cause of severance of the employment.

1211 A man merely may have been laid off due to lack of work.

Mr. Swiren: I think that is exactly the point. Let us find out how the man left the employment of the company. That is a vital element to the question of wether he should come back to work, or whether he should have been taken back to work.

Trial Examiner Dudley: There can be discrimination, if the facts so prove.

Mr. Swiren: The facts, so far—

Trial Examiner Dudley: I think the complaint has set them up sufficiently.

Mr. Swiren: They are making two different charges. One ties into the other, necessarily. The only evidence before this Examiner at the present time is that there was a discharge of men for seizing the plant, and not a discharge for engaging in any activity permitted by the Act.

Trial Examiner Dudley: Mr. Walsh could be seeking to prove now Paragraph 11 of the complaint, and Paragraph 8 of the complaint.

Mr. Keele: The most important point, I think, is this: The very word "reinstatement" in itself implies a discharge, does it not?

As a matter of logic, there must be a discharge before there can be a reinstatement.

1212 Mr. Walsh: That is not true.

Mr. Keele: How can a man be reinstated if he has never been discharged?

Mr. Swiren: That is the only evidence before this court, (handing document to the Trial Examiner), except this other order which contains similar language.

Mr. Walsh: There can be a lay-off, or a stopping of work. You do not have to have a discharge. The word "discharge" has a very definite connotation in this particular field. A lay-off is one thing, and a discharge is another thing.

There can be a failure to reinstate after a lay-off.

Mr. Keele: I do not see how the courts can get around this point: The logic of it is that before there is a reinstatement there must be a discharge. The word "reinstatement" is a simple word which Webster definies clearly. Before we can get the word "reinstate"—

Mr. Walsh: There must be a condition of employment.

Mr. Swiren: There must be a severing of employment.

Mr. Keele: No. There must be one of two things—

Mr. Walsh: There does not have to be a severing of employment.

Mr. Keele: There has to be one of two things: One is a condition of employment, otherwise you could not use the prefix "re", which means "again".

1213 The second thing is there must be some sort of a termination of the employment, whether you call it a furlough, or anything else. A 99-year furlough would be a very effective discharge. There has to be some sort of a cutting off of that employment, whether you call it a furlough or

something else. We are not concerned with the terminology of it.

Then you come to the question of whether or not the man resumes, because "reinstatement" means "resumption", logically, of employment.

Our contention here is that until such time as you can show an interruption of any such a nature as to show termination of the employment, there cannot be such a thing as a reinstatement.

We are getting the cart before the horse, in starting in on the question of failure to reinstate. There is not any doubt about the fact there can be discrimination in reinstatement, but you have to have something to show there was a termination, and thus far the government has not put in any evidence as to any kind of an interruption.

Mr. Walsh: I believe it is in the evidence.

Trial Examiner Dudley: Mr. Keele, I appreciate your logic, and I think you are right, but I believe that Mr. Walsh should simply ask the witness if the plant was in operation between certain dates, if he worked during that period, and whether he was asked by the company to return to work after that period.

1214

Mr. Keele: That will not cover it, Mr. Examiner, because there were some people who were not working in the factory. There were certain men who were unable to work in the factory, but who received their pay.

The question is not whether you were doing ~~manual~~ labor. The question is whether your employment was continuous. I might not be working for the law firm for the period of the month of August. I might be on my vacation, but my pay goes on and my employment certainly is not terminated. If the office burns down, or if the office is closed for repairs, my salary continues.

You can call it a furlough if you want to, or you can call it anything else, but that is not a termination. You have a termination, when the activity of production stops, and you do not have a termination otherwise.

Mr. Swiren: And when you return, there is no reinstatement; there is just a continuance.

Trial Examiner Dudley: Pursuant to your suggestion, Mr. Walsh, you might also ask the witness if he was paid during this period the plant was shut down.

Mr. Swiren: They might have owed him money. That does not settle the question. The question is, did he continue

in the employment of the respondent, or was that employment terminated? Unless they show a failure to con-
1215 tinue the employment, and thereby show a termination, there cannot be any problem of reinstatement.

Trial Examiner Dudley: I think we will—

Mr. Swiren: I think there is a very determined effort on the part of counsel for the Board to avoid the facts. I think this is a grand opportunity for the Examiner to call on counsel for the Board to bring all the facts before the Board.

Trial Examiner Dudley: Let us hear the evidence and see what it is. Then you can renew your motion.

Mr. Walsh: We want to develop all the facts that are material to the case.

Mr. Swiren: It seems to me that rulings of that kind, taking in everything, and looking at it afterwards may be all right with reference to individual items of evidence, but here we are considering the crux of this whole case, and I do not think the Examiner ought to permit a general field day without confining counsel for the Board to the requirements of the law.

Trial Examiner Dudley: I will admit it subject to your right to renew your motion after the evidence is in.

Mr. Walsh: Where do we stand now?

Mr. Keele: Allow me to say this, if I may, even though the Examiner has ruled: As a matter of orderly procedure,
1216 it seems to me counsel for the government ought not be permitted to allow an hiatus of two weeks or three weeks to come into the midst of this case.

He very carefully began with the history of this company, went into what it does, and how it does it. He covered the events leading up to this so-called labor dispute during July, August, September, and on to February.

Then, suddenly, as though there had been a cataclysm, at two o'clock, on the day of February 17th, there is a stopping of all evidence, and we jump over to March 5th.

Now, the contention here is that this is not a question of trying to win a lawsuit. Supposedly this is an endeavor to get the facts before the Trial Examiner, all of the facts. If my conception of the duties of the attorney for the Labor Board is correct, his job is not to try to win a case for the government, but to bring all of the facts out. In other words, the purpose is not merely to defeat the respondent, but to impartially develop all the facts pertinent to this inquiry.

Now, there appears to be a very obvious and patent effort

on the part of counsel to avoid all the facts from two o'clock or two-thirty in the afternoon of February 17th until March 5th, 1937.

Now, those facts must have some pertinency. He has very carefully developed all the facts up until that time. Our contention is that that is the very period during which
1217 the question of the discharge — or furlough, if you please, if he wants to term it that—occurred. We do not believe that it is fair, or that it is orderly procedure—although he has a right to prove his case in his own way—to permit him to jump on into March, on the supposition that he is going to come back and cover that period, which, obviously, he does not want to cover.

Trial Examiner Dudley: I think, Mr. Keele, from what you and Mr. Swiren said, that probably those events can be covered very simply either by Mr. Walsh or by yourselves. I think perhaps a stipulation, or one bit of testimony would cover the whole thing. I know what you have in mind. I do not think it is very difficult for you to prove it. I do not see that it is necessary to prove it now.

Mr. Walsh: I do not believe it is necessary for me to introduce anything that is not pertinent to the inquiry.

Mr. Swiren: I cannot think of anything more pertinent to the question of reinstatement than the existence of the employment, and the severance of the employment.

Trial Examiner Dudley: Let us admit the evidence, and see what it turns out to be.

Mr. Walsh: Mr. Reporter, will you go back and read everything that the witness has heretofore testified to.

Mr. Swiren: Just a minute, before you do that. If the Examiner please, may this objection be noted with re-
1218 spect to any further testimony by other witnesses. I understand Mr. Walsh has in mind a number of witnesses who will testify along the same line.

We do not want to interrupt the proceeding with repeated objections. We want to note our objection to all such testimony.

Trial Examiner Dudley: I think that is a good idea. Your objection is therefore noted in the record to the testimony of this witness, and all following witnesses who testified along this line.

Mr. Walsh: Now, Mr. Reporter, will you read the witness' testimony?

(The record was read.)

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh.) Mr. Ark, did work stop at the plant on the afternoon of February 17, 1937?

A. Yes.

Q. The plant did not operate during the period from February 17th until February 26th, did it?

A. Yes.

Q. Perhaps you misunderstood me. Were you working during that period?

A. Between the 17th and 26th?

Q. Yes.

A. No.

1219 Q. Now, when the plant started up after February 26th, you went to the plant and got your pay check and they took up your pass, is that right?

A. Well, I didn't get my check right away. I guess the lawyer must have fixed it up we got the checks on the 5th of March.

Q. The 5th of March?

A. Yes.

Q. Have you at any time been offered reinstatement by the company?

A. No.

Q. What did you earn per week just before you stopped work down there?

A. Well, $27.

Q. How much have you earned since the 17th of February?

A. How much have I earned at other jobs?

Q. Yes.

A. I made $20 one time. That is all.

Q. Have you had any other work or any other earnings?

A. No.

Mr. Swiren: How much did he say he earned?

Mr. Walsh: $20.

Mr. Swiren: All right.

Mr. Walsh: You may inquire—no. I have just one more question.

1200 Q. (By Mr. Walsh.) Who did you talk to when you got your pay check?

A. Well, just a girl there at the information place.

Q. All right.

A. I told her my check number and that I wanted my check, and I got my check. The pay clerk brought the check down.

Mr. Walsh: That is all; you may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) What else happened then, when you got your pay check?
A. What happened when I got my pay check?
Q. Yes.
A. I don't remember anything happening then.
Q. Nothing happened?
A. No.
Q. You say that the operation of the plant stopped from February 17th to February 26th, is that right?
A. Yes, sir.
Q. Did the plant superintendent tell you to stop work that day?
A. Pardon?
Q. Did the plant superintendent tell you to stop work on that day?
A. No.
Q. Who told you to stop work?
1221 A. Well, the members of Lodge 66.
Q. The members of Lodge 66 told you to stop work?
A. The committee.
Q. The committee told you to stop work?
A. Yes.
Q. So you stopped? Did you go home then?
A. No.
Q. What did you do?
A. We went into the building, building 3. Some went to building 5.
Q. You held those buildings until the 26th of February, is that right?
A. That is right.
Q. You remained there during that entire period?
A. Yes.
Q. Is that right?
A. Yes.
Q. Did you do any work while you were in there?
A. Did I do any work?
Q. Did you do any production work?
A. No.
Q. Did you want the company to pay you while you were sitting in those buildings?
A. No.

Mr. Walsh: I object to that, your Honor, as not be-
1222 ing material to the inquiry here.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: I cannot think of anything more important.

Trial Examiner Dudley: The answer may stand.

Q. (By Mr. Swiren.) By the way, did the sheriff try to get into the buildings while you were in occupancy during the period from February 17th to February 26th?

A. Well, I don't know who was wanting to get in.

Q. You did not let them in, whoever they were, is that right?

A. (No answer.)

Q. Is that right, Mr. Ark?

A. How is that?

Q. You did not let them in, whoever they were?

A. It wasn't only myself.

Q. You and the others together?

A. The whole gang of us, yes.

Q. The sheriff tried pretty hard on the 19th to get in, did he not?

A. I don't know who it was, but somebody tried to come in.

Q. You and the other men who were holding the buildings, Buildings 3 and 5 were involved in the injunction suit in the Circuit Court of Lake County, is that right?

A. I suppose.

Q. Well, you know that, do you not?

1223 A. (No answer.)

Q. You know that is so do you not?

A. Well, sure.

Q. Together, you men held the buildings from the 17th of February until the 26th of February?

A. Yes.

Q. You refused to admit the sheriff or the company into those buildings, is that right?

A. Yes. We was defending our rights.

Trial Examiner Dudley: What was the answer to that last question?

The Witness: Yes, we was defending our rights.

Mr. Block: Perhaps Mr. Walsh will stipulate as to the parties to the Circuit Court suit, and the respondents in that proceeding. I do not know whether this man was one of them or not.

Now, you were one of the parties to that suit, were you not?

Mr. Walsh: He does not know what that means.

Mr. Block: I wonder if that could not be stipulated to, in order to save some time? I wonder if it could not be stipulated that he was one of the parties to the original complaint, and petitions for contempt?

Trial Examiner Dudley: This shows that, does it not?

Mr. Block: It does not show that they are the same
1224 parties.

Trial Examiner Dudley: Does it not list them by name?

Mr. Block: Yes, but it does not show they are the same men. This can be off the record, Mr. Reporter.

Mr. Swiren: Yes. Do not put this on the record.

(Discussion outside the record.)

Mr. Swiren: Mr. Reporter, take this stipulation. See if it is satisfactory, Mr. Walsh?

Mr. Block: It is stipulated that this witness, Steve Ark, was one of the defendants in the original complaint filed in the suit in the Circuit Court of Lake County No. 37551, entitled "Fansteel Metallurgical Corporation *vs.* Lodge 66, et al."; that he was also one of the respondents in the petitions for contempt that were filed in said cause; that he was one of the men engaged in what has been termed here as a sit-down strike, and the occupancy of either Building 3 or Building 5 during the period from February 17th to February 26th, 1937, and that he was also one of the respondents who was found guilty of contempt of court for violating an injunction entered in the case above referred to, No. 37551."

Mr. Walsh: I do not think I can go that far.

Mr. Block: There is nothing—

Mr. Walsh: I do not think I can go that far, because I do not agree, and I cannot agree to be bound by all the findings of the—

1225 Mr. Block: We are not talking about the findings. This is merely a question of identification. This man is one of the men.

Mr. Walsh: I can go that far. He is one of the defendants in the original case who was found guilty by the Circuit Court of contempt of court.

Mr. Block: The only purpose of the stipulation, in order to save time, is to establish that he was one of the men who was occupying either Building 3 or Building 5 as the case

may be, beginning on February 17th, up to including February 26th, 1937.

Mr. Walsh: That is right; I can go that far.

Mr. Swiren: It is so stipulated, is that correct?

Trial Examiner Dudley: Why do you not do this: Why do you not ask the question "Were you one of the men in Building 3 or Building 5 beginning on February 17th, 1937, to and including February 26th, 1937", and then ask "Are you the same John Smith who was a defendant in the Circuit Court Case"?

Mr. Block: That would be all right, except for the fact that apparently they do not understand the question clearly, and for that reason I think it is perhaps quicker to do it this way.

Trial Examiner Dudley: Well, proceed.

Mr. Swiren: What was the last question?

(The question was read.)

1226 Q. (By Mr. Swiren.) You were one of the respondents in the Circuit Court case that was found guilty of contempt for violating the court's injunction, were you not?

A. Yes; I got ten days and $100.

Q. Do you expect the company to pay you for the time you have been sitting in jail under that court order?

Mr. Walsh: I object.

Trial Examiner Dudley: That question is not proper.

Mr. Swiren: I will withdraw the question.

Trial Examiner Dudley: Mr. Block mentioned the question of identity. I suppose you have covered that by your last question. That is all right.

Q. (By Mr. Swiren.) You are the same Steve Ark who was named as a defendant and as a respondent to Petitions to show cause in the Circuit Court case we have just talked about, are you not?

A. I am.

Q. Which building were you in during that period?

A. Building 3.

Q. You remained there day and night throughout the entire period from February 17th to February 26th?

A. Yes.

Q. You left the building on February 26th?

A. That is right.

Q. Did you go back to the building in which you or-

1227 dinarily worked?

A. No; I couldn't get in.

Q. Did you go back?

A. I couldn't get in, even if I wanted to.
Q. Did you go back?
A. No, I didn't.
Q. Were you willing to return to work on the 26th of February, provided the other men did?
A. Yes.
Q. Were you willing to go back alone?
A. No, not myself, because I wasn't involved myself.
Q. You were not willing to go back to work at that time alone, under any conditions, were you?
A. No.
Mr. Swiren: That is all.
Trial Examiner Dudley: Mr. Ark, what were you doing—
Mr. Swiren: Just a minute, Mr. Ark. Do not leave the stand yet.
Trial Examiner Dudley: I would like to ask you one or two questions.
The Witness: All right.
Q. (By Trial Examiner Dudley.) What were you doing when you earned $20, which you said you earned since that time?
A. Well, washing walls at Slovenik National Hall.
Q. Was that after February 27th?
1228 A. Yes.
Q. Have you engaged during your employment with the company in any outside activity of employment, of the type you just mentioned?
A. No.
Q. This was entirely different work?
A. Yes.
Trial Examiner Dudley: That is all.
Mr. Walsh: That is all.
Mr. Swiren: I have no further questions.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Trial Examiner Dudley: We will take a five minute recess.
(A short recess was taken.)
Trial Examiner Dudley: We will reconvene the hearing. Come to order, please.
Mr. Walsh: Mr. Brunke.

ED BRUNKE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) You are Ed Brunke, are you?
A. Yes, sir.
Q. You were served with a subpoena this morning?
1229 A. I was.
Q. To appear before the Examiner?
A. Yes.

Mr. Collins: On behalf of the witness, I would like to claim his privilege, Mr. Examiner, under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your address.
A. I live at 1018 Park.
Q. How long were you employed at Fansteel?
A. I would say between 12 and 14 years.
Q. What was your job?
A. Grinder.
Q. In what department?
A. The contact department.
Q. When did you join the union?
A. Some time in July.
Q. 1936?
A. Yes.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No.

Mr. Block: May I make a suggestion along the lines we talked about?

1230 Mr. Walsh: Yes.

Mr. Block: This is off the record, Mr. Reporter.

(Discussion outside the record.)

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh.) Between February 17th and February 26th, buildings 3 and 5 of the plant were occupied by certain men, were they not?
A. They were.
Q. Were you one of those men?
A. I was.

Q. When did you get your last pay from the company?
A. Somewhere around the fifth of March.
Q. At the time you got your pay, did the company take up your pass?
A. They did.
Q. Did you go to the plant to get your pay?
A. I did.
Q. Who gave you your last check?
A. The timekeeper, Schardt.
Q. Did you have any talk with him that day?
A. I didn't.
Q. Were you ready to go back to work?
A. Not unless the union was recognized.
Mr. Swiren: What was the answer?
Mr. Walsh: "Not unless the union was recognized."
1231 Mr. Block: Not unless what?
Mr. Walsh: "Not unless the union was recognized."
Q. (By Mr. Walsh.) What was your weekly pay just before February 17th, your average wage?
A. $23.60.
Q. How much have you earned since February 26th, 1937?
A. About $20.
Q. What did you work at?
A. Little odd jobs.
Q. Did you carry on those odd jobs when you were working at Fansteel regularly?
A. No.
Q. You were one of the respondents in the contempt case here, and a defendant in the injunction case in the Lake County Circuit Court, Case No. 37551, were you not?
A. I was.
Q. You are now confined to the County Jail?
A. I am.
Q. Because of being found guilty of being in contempt of that injunction, is that right?
A. Yes.
Mr. Walsh: That is all.
Trial Examiner Dudley: Did you ask him whether his check paid him up through February 17th?
Q. (By Mr. Walsh.) What period did that last check
1232 you got cover?
A. That was the latter part of—the last check I got was in the latter part of March. That covered the day we were in the building there.

Q. That is, for the time between the pay that preceded the time that the trouble occurred, and the time the trouble occurred, is that right?

Trial Examiner Dudley: You mean, up to the time the buildings were closed.

The Witness: I got one March 15th. That covered the first part of February. Then the last one I got, in the latter part of March, covered the last few days of pay that we were in the building.

Q. (By the Trial Examiner Dudley.) You say you got your last check on March 5th?

A. No, I got two of them in March.

Q. You testified you got your last check on March 5th. When did you get your last check?

A. I think we got two of them in March. That is what I thought you were referring to.

Q. (By Mr. Walsh.) You got one on March 5th, which you just told me about. Were there two checks?

A. Well, that is the way I thought it was. Pay-day starts on the 1st and 15th. Then you get that, on the 20th—

Q. That is payable on the 20th?

1233 A. Then there is one that starts on the 20th—

Q. On—

A. Or from the 15th to the last of the month and you get that on the 5th of the following month.

Q. Well, now, the one you got on the 5th was for the days of the 15th, 16th and 17th?

A. No. That would be for the first part of February.

Q. That would be for the first part of February?

A. We were in the building from the 17th on.

Q. Your normal pay day would have been the 20th?

A. The 20th.

Mr. Swiren: Was that two weeks' pay or one week's pay?

Q. (By Mr. Walsh.) That was two weeks' pay, was it not?

A. Yes.

Q. Do you remember how much your two weeks check was for the first half of February?

A. I believe it was around $54.

Q. $54.

A. Yes.

Mr. Walsh: That is all.

Examination by Trial Examiner Dudley.

Q. Were you paid up through February 17th, 1937?
A. Was I paid?
Q. Did you receive your pay for the period up through February 17th?
1234 A. No.
Q. You did not? Did you work up to February 17th?
A. Oh, yes, sure.
Q. Did you get paid for it?
A. Yes, up to the 17th.
Q. Did you get paid for any time after February 17th?
Mr. Walsh: You said your weekly average pay just prior to the trouble was $23.60.
The Witness: Yes.
Mr. Walsh: And that your two weeks' pay for the first half of February was about $54?
The Witness: Approximately, yes.
Q. (By Trial Examiner Dudley.) Were you working overtime?
A. Yes. We were working overtime just before the strike.
Q. How much did you get per hour?
A. 59 cents an hour.
Q. Was that your regular hourly rate?
A. Yes.
Q. How many hours did you work normally, per week?
A. Eight hours.
Q. How many hours a week?
A. Eight hours a day.
Q. How many days?
A. Five days was the regular week.
Q. That was a 40 hour week?
1235 A. Yes.
Q. And 59 cents an hour?
A. Yes.
Trial Examiner Dudley: All right.
Q. (By Mr. Walsh.) The stoppage of the work at the plant was caused by what?
A. By the strike.
Q. The management did not request you to cease work, did they?
A. No.
Mr. Walsh: Does that cover it?
Mr. Swiren: I just have one question.

Cross-Examination.

Q. (By Mr. Swiren.) By the "strike," you mean the taking over of Buildings 3 and 5, is that right?
Mr. Block: That is when it stopped.
Q. (By Mr. Swiren.) When those buildings were taken over, work was automatically stopped in the plant—
A. Yes.
Q. —is that right?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: Thank you very much. You may be excused.
1236 (Witness excused.)
Mr. Walsh: Al Bunton.

AL BUNTON, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Al Bunton?
A. Yes, sir.
Q. You were subpoenaed to appear before the Examiner today, were you not?
A. Yes.
Mr. Collins: Mr. Examiner, I would like to claim the privilege of the witness under Section 11, Paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted to the witness.
Q. (By Mr. Walsh.) What is your address, Mr. Bunton?
A. Libertyville, Illinois.
Q. How long have you been employed by Fansteel?
A. About 11 years.
Q. What was your job?
A. I was a grinder in the contact department.
Q. When did you join the union?
A. In July.
Q. 1936?
1237 A. Yes.

Q. Did the plant operate between February 17th and February 26th?
A. No, it did not.
Q. Are you one of the men who occupied the plant between those dates?
A. Yes.
Q. You were one of the respondents in the contempt case, and a defendant in the injunction case in the Lake County Circuit Court, Case No. 37551?
A. Yes.
Q. You are now serving a term in jail on a contempt citation, are you not?
A. Yes.
Q. When did you get your last pay from the company?
A. I believe it was March 5th.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you go then to the plant to get your pay?
A. Yes. I went in the office.
Q. Who gave you your last check?
A. I think it was the timekeeper, if I remember rightly.
Q. Did you have any conversation with him at that time?
A. No.

Q. How much did you get per hour at the plant?
1238 A. Well, my day rate was 55, and my piece rate, on my piece work, amounted to around 65.
Q. Around 65 cents an hour?
A. At that time.
Q. Just prior to the strike?
A. Yes.
Q. What was your weekly pay?
A. Well, it is hard to say because I sometimes worked day work. If I worked piece-work, the whole week, it would be around $27.

Mr. Swiren: I cannot hear the witness back here. Will you read the last answer please, Mr. Reporter.

(The answer was read.)

Q. (By Mr. Walsh.) How much have you earned since February 26th?
A. I have earned $5.50.
Q. What did you do to earn that?
A. Well, I done a little manual labor for a man.
Q. Normally when you worked at Fansteel, you did not do any work on the outside?

A. While I was working at Fansteel?
Q. Yes.
A. No.
Q. The cessation of work there was caused by the strike, was it not?
1239 A. Yes.
Q. The management did not ask you to stop work, did it?
A. No.
Mr. Walsh: That is all.
Mr. Swiren: When you referred to a strike, you mean the taking over of buildings 3 and 5, by you and the others, is that right?
The Witness: Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: John Camernik, Jr.

JOHN CAMERNIK, JR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Mr. Examiner, I would like to claim the privilege on behalf of Mr. John Bartholomew Camernik, Jr., under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your full name.
A. John Bartholomew Camernick.
Q. Where do you live?
1240 A. 1109 McAllister, North Chicago.
Q. How long were you employed at Fansteel?
A. Seven months.
Q. What was your job?
A. Maintenance.
Q. What department were you in? Did you work just all over the plant?
A. The entire plant.
Q. What did you do?

A. I helped the plumber, the electrician, the carpenters, and so forth.
Q. When did you join the union?
A. In July.
Q. 1936?
A. Yes.
Q. Did the plant operate between February 17, 1937 and February 26th, 1937?
A. No, sir.
Q. When did you get your last pay?
A. The 5th of March I think.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you go to the plant for your pay?
A. Yes.
Q. Who gave you your last check?
1241 A. The timekeeper.
Q. Did anyone connected with the company say anything to you when they took up your pass?
A. Luther was there.
Q. Who?
A. Luther Henry.
Mr. Swiren: Speak up a little please, I cannot hear you back here.
Mr. Walsh: Speak up a little louder so Mr. Swiren can hear you.
The Witness: Luther Henry was there, and he said "Well, I am very doubtful about you coming back."
Q. (By Mr. Walsh.) How much was your hourly rate?
A. 55.
Q. How many hours a week did you work?
A. It all depends on busy we were.
Q. What was the normal work week?
A. 40 hours.
Q. What did your pay average?
A. Straight time, $22.
Q. Were you paid any overtime?
A. Yes.
Q. Do you know how much your pay was between February 1st and February 15th?
A. I don't, offhand.
1242 Q. How much have you earned since February 26th?
A. About sixty bucks, or somewhere around there.
Mr. Swiren: How much was that?

Mr. Walsh: $60.

Q. (By Mr. Walsh.) What did you do to earn that money?

A. Radio work.

Q. Normally, do you do any outside work when you are working at Fansteel?

A. Just once in a while, for friends.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?

A. Yes, sir.

Q. You are one of the respondents in the contempt case, and one of the defendants in the injunction case, in the Fansteel matter, are you not?

A. Yes.

Q. You are presently confined to the County Jail serving a contempt term?

A. Yes.

Q. This stoppage of work that occurred on the 17th was caused by a strike, was it not?

A. Yes, sir.

Q. The management did not ask you to stop work, did they?

A. Yes.

Q. I do not think you understood the question. I
1243 say, the management did not ask you to quit work, did they?

A. No, sir.

Q. Work stopped at the moment the buildings were taken over, is that right?

A. Yes.

Q. Were you offered re-employment?

A. No, sir.

Mr. Walsh: That is all.

Q. (By Trial Examiner Dudley.) You are not working now?

A. I was a couple of weeks ago, at Johnston Motors. I worked down there five days, and then sat around the courthouse.

Q. Was your pay from Johnston Motors included in this $60?

A. Yes.

Q. Do you have a regular position, or regular employment from Johnston Motors now?

A. I don't get you.

Q. Do you have a regular position at Johnston Motors now?

A. I don't know.
Mr. Swiren: What was the answer to that?
Mr. Walsh: He does not know.
The Witness: I don't know. It is temporary. I was on the night force.
Mr. Walsh: That is all.
Trial Examiner Dudley: Is that all, Mr. Swiren?
Mr. Swiren: Just a moment.
1244 Mr. Walsh: Is that all?
Mr. Swiren: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Mr. Dietmeyer.
Mr. Collins: Mr. Examiner, I think that the record can show that I claim privilege on behalf of all of the witnesses, can it not?
Mr. Walsh: I think you had better claim it each time.
Mr. Collins: Perhaps I had better.
Trial Examiner Dudley: I think so.

VINCENT DIETMEYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Victor Dietmeyer?
The Witness: Yes.
Trial Examiner Dudley: Is it not Vincent Dietmeyer?
Mr. Collins: Vincent Dietmeyer; I stand corrected. You were served with a subpoena, were you not, this morning?
The Witness: I was.
Mr. Collins: If the Examiner please, on behalf of this witness I would like to claim his privilege under Section 11, Paragraph 3 of the National Labor Relations Act.
1245 Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) State your address, Mr. Dietmeyer?
A. 431 North Genessee.
Q. How long were you employed by Fansteel?
A. About four months.
Q. What was your job?
A. Electrician.

Q. Were you in the maintenance department?
A. Yes.
Q. When did you join the union?
A. In the latter part of November, I think.
Q. 1936?
A. Yes.
Q. Did the plant operate between February 17 and February 26?
A. No, sir.
Q. Speak up so the reporter can hear you.
A. No, sir.
Q. When did you get your last pay from the company?
A. I think I got it on March 5th.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did you go to the plant to get your pay?
A. I went to the office.
1246 Q. Who gave you your last check?
A. The timekeeper.
Q. Were you offered re-employment at that time?
A. No, sir.
Q. Did you talk to anybody about it?
A. No, sir.
Q. How much was your hourly rate?
A. 70 cents an hour.
Q. How many hours a week did you work?
A. 40 hours.
Q. What was your average weekly pay?
A. My average weekly pay?
Q. Yes.
A. It was about $34 a week.
Q. How much have you earned since February 26th?
A. Two weeks board.
Q. How much did that amount to in money?
A. About $12.
Q. About $12?
A. Yes.
Q. What did you do to earn that money?
A. I helped out in the tavern.
Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?
A. I was.
1247 Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Yes.
Q. The management did not request you to stop work on the 17th of February did they?
A. No.
Q. This stoppage of work was occasioned by the men taking over the plant, is that right?
A. That is right.
Mr. Walsh: That is all.
Q. (By Mr. Swiren.) Did you always work your full 40 hours a week?
A. Yes, sir.
Mr. Swiren: That is all.
Trial Examiner Dudley: Is that all, Mr. Walsh?
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Joseph Chudy.

JOSEPH CHUDY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Joseph Chudy?
The Witness: Yes, sir.
1248 Mr. Collins: You were served with a subpoena to appear before the Examiner?
The Witness: Yes, sir.
Mr. Collins: On behalf of the witness, I would like to claim his privilege under Section 11, Paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) What is your address?
A. 709 McAllister, Waukegan, Illinois.
Q. How long were you employed at Fansteel?
A. Approximately two years.
Q. What is your job?
A. Die polisher, Diamond, Tungsten, Carbide.
Q. In what department?
A. The wire department.
Q. When did you join the union?
A. The first part of August.

Q. 1936?
A. Right.
Q. Did the plant operate between February 17 and February 26, 1937?
A. No, it did not.
Q. When did you receive your last pay from the plant?
A. About the third of March, the third or fourth of March.
1249 Q. Did the company take up your pass at that time?
A. No, they didn't.
Q. Do you still have your pass?
A. Yes, I do.
Q. Did you go to the plant for your pay?
A. Yes, sir, I did.
Q. Who gave you your last check?
A. George Schardt.
Q. Did you talk to anybody connected with the company at that time?
A. I inquired about my car. I had my car on the premises at the time. I spoke to Bill Schultz about my car.
Q. Did they offer you re-employment at that time?
A. No, they didn't.
Q. What was your hourly rate of pay?
A. 62 cents an hour.
Q. How many hours a week did you work?
A. Eight hours, eight hours a day, five days a week.
Q. What was your weekly pay?
A. About $24.80.
Q. How much have you earned since February 26th?
A. Approximately $225.
Q. At what line of work did you do that?
A. As a salesman.
Q. When did you earn this money?
1250 A. Since the strike.
Q. Normally, when you are working at Fansteel, do you earn any money on the outside?
A. No, I do not.
Q. You were one of the men who occupied the plant between February 17th and February 26th, 1937?
A. Yes.
Q. You were one of the respondents in the contempt case and one of the defendants in the injunction case, were you not?
A. Yes, sir.

Q. You are presently serving a term in the County Jail on the contempt citation?

A. Yes.

Q. The management did not ask you to stop work on the 17th of February, did they?

A. No.

Q. The stoppage was the result of the men taking over the plant, is that right?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Swiren: No questions.

Q. (By Trial Examiner Dudley.) Have you been offered employment by the Fansteel Company at any time since February 26th, 1937?

1251 A. No, I have not.

Trial Examiner Dudley: That is all.

Q. (By Mr. Swiren.) Did you apply for re-employment?

A. No, I didn't.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: I will call Clarence Dreyer. The witness has been sworn previously, your Honor.

CLARENCE DREYER, was recalled as a witness for the National Labor Relations Board, being previously duly sworn, further testified as follows:

Direct Examination.

Trial Examiner Dudley: You also claimed your privilege before, did you not?

The Witness: Yes.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) How long were you employed by the Fansteel Company?

A. Approximately 17 years.

Q. What is your job?

A. During the time of the 17 years?

Q. Yes,—well, tell us what it was just recently.

A. Just recently I was working in the cutting department, cutting Tungsten discs for contact assemblies.

1252 Q. Now, when did you—

Mr. Swiren: Speak louder, Mr. Dreyer, so we can hear you over here.

Mr. Walsh: You will have to speak up so Mr. Swiren can hear you back there.

Q. (By Mr. Walsh.) When did you join the union?

A. Some time in July, 1936.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No.

Q. When did you get your last pay from the plant?

A. I don't remember the exact date, but was in March. It was for a day and six hours.

Q. Representing the period between February 15th and February 17th, is that right?

A. That is right.

Q. Did the company take up your pass at that time?

A. They did.

Q. Did you go to the plant to get your pay?

A. I did.

Q. Who gave you your last check?

A. George Schardt, the timekeeper.

Q. Were you offered re-employment at that time?

A. No.

Q. Have you since been offered re-employment?

1253 A. Since that time?

Q. Yes.

A. No.

Q. What was your hourly rate?

A. The hourly rate was 55 cents an hour.

Q. You worked 40 hours a week?

A. I worked 40 hours a week. I worked on piece work most of the time.

Q. What was your average weekly check, just prior to the strike?

A. Well, on piece work I should say about between $30 and $35. It would be an average of about $37.

Q. An average of $37?

A. No, I mean $32.50.

Q. $32.50 a week?

A. Yes, sir.

Q. How much have you earned since February 26th, 1937?

A. Oh, I should say around $75 at the present time.

Q. What did you do?

A. Just odd jobs.
Q. Do you remember the dates on which you earned this money?
A. It has been at different times. I don't remember.
Q. Normally when you are employed by Fansteel, do you do any work on the outside?
1254 A. Not for compensation, no.
Q. You were one of the men who occupied the plant between February 17 and February 26?
A. I was.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?
A. I was.
Q. You are presently serving a jail sentence in the contempt case, are you not?
A. I am.
Q. The management did not ask you to stop work on February 17th, did they?
A. No, sir.
Q. The stoppage of work was occasioned by the men taking over the plant, was it not?
A. That is right.
Mr. Walsh: That is all.

Cross Examination.

Q. (By Mr. Swiren.) You were asked to return to work after the men were evicted from buildings 3 and 5, were you not?
A. I was asked to return to work as a new employee. I was asked to fill out a new application card, and I wasn't really promised a job. He told me he might find something for me to do.
1255 Q. He told you in order for you to come back to work it was necessary to fill out an application?
A. A new application form.
Q. Who told you that?
A. Luther Henry.
Q. You said you did not want to come back, is that right?
A. Not as a new employee.
Q. You did not want to fill out a new application?
A. No.

Q. He told you that after you filled out your application you would have to see Mr. Anselm, is that right?

A. He didn't. He told me he might find something for me to do.

Q. You refused to fill out an application and left, is that right?

A. Yes.

Q. Then you never went back any more?

A. I was back there once after that to get my personal belongings that I had in the plant.

Q. You did not apply for work at that time, though, did you?

A. No.

Q. You have held an office in Lodge 66?

A. I did at one time.

Q. What office did you hold?

1256 A. The office of vice president.

Q. You served on some of the committees that called on the management from time to time, did you not?

A. I believe three different committees.

Q. Yes. Are you still a member of Lodge 66?

A. Yes.

Q. When did you cease being an officer?

A. I don't remember the exact date, but it was some time after the 21st of September.

Q. You were a member of the bargaining committee that called on Mr. Anselm twice on the 17th, were you not?

A. No.

Q. You were not a member of that committee?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Art Holm, Jr.

ART HOLM, JR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Art Holm, Jr.?

The Witness: Right.

1257 Mr. Collins: Were you subpoenaed to appear here before the Examiner?

The Witness: Yes.

Mr. Collins: Mr. Examiner, on behalf of the witness, I would like to claim his constitutional privilege under the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) State your address, Mr. Holm?

A. 142 McKinley Avenue.

Q. Waukegan?

A. Yes.

Q. How long were you employed by Fansteel?

A. Ten years.

Q. What is your job?

A. Millwright.

Q. In the maintenance department?

A. Yes.

Q. When did you join Lodge 66?

A. I don't know. Around September, I guess.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th and February 26th, 1937?

A. No, sir.

1258 Q. When did you get your last pay from the plant?

A. Somewheres in March.

Q. Did the company take up your pass?

A. Yes.

Q. Do you remember the date they took it up? Do you remember the date they took up your pass?

A. I don't remember.

Q. Did you go to the plant to get your last pay?

A. Yes.

Q. Who gave you your last check?

A. Schardt.

Q. Did you talk to him—
A. No.
Q. —at that time?
A. No.
Q. Have you been offered re-employment by the company since you were paid off?
A. No, sir.
Q. How much was your hourly rate?
A. 80 cents an hour.
Q. How many hours a week did you work?
A. 40.
Q. What was your average pay, just before the strike?
A. Around $65 or $70 for two weeks.
Q. For the two week period?
1259 A. Yes.
Q. That would be between $32.50 and $35.00, a week, is that right?
A. Yes.
Q. How much have you earned since February 26th?
A. $9.
Q. What did you do to earn that?
A. I painted.
Q. Do you normally do any work outside of the plant?
A. No.
Q. When you are working in the plant?
A. No.
Q. You are one of the men who occupied the plant between February 17th and February 26th?
A. Yes.
Q. You are one of the defendants in the injunction case, and one of the respondents contempt case?
A. Yes.
Q. You are now serving a term in the county jail on the contempt citation, are you not?
A. Yes.
Q. The management did not ask you to stop work on February 17th, did it?
A. No.
Q. Its stoppage was occasioned by the men taking
1260 over the plant is that right?
A. That is right.
Q. Have you been offered re-employment at any time by the company since February 26th?
A. No.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Did you apply for re-employment since that time?

A. What?

Q. Did you apply for re-employment since that time?

A. No.

Q. You have not?

A. No.

Q. By the way, when you say your average pay for two weeks was $65 or $70, were you not referring to your pay that you received twice a month?

A. Yes, twice a month.

Q. Sometimes that was more than two weeks, was it not?

A. A little more, and a little less sometimes. It all depends on how many days of pay it was.

Q. Outside of February, it would not be a little less at any time, would it?

A. No.

Q. If you had been offered re-employment by the 1261 company without any conditions on the 27th of February, were you ready to go back to work alone, regardless of what any of the other men did?

A. No.

Mr. Swiren: That is all.

Trial Examiner Dudley: Is that all, Mr. Walsh?

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Edward Kaucic.

EDWARD KAUCIC, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: What is your name?

The Witness: Edward Kaucic.

Mr. Collins: You were served with a subpoena to appear here this morning before the Examiner, were you not?

The Witness: Yes.

Mr. Collins: Mr. Examiner, on behalf of the witness I would like to claim his constitutional privilege, under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) Will you spell your last name
1262 for the reporter, please?

A. K-a-u-c-i-c.

Q. What is your addresss?

A. 670 Lincoln Street.

Q. Waukegan?

A. Waukegan.

Q. How long were you employed by Fansteel?

A. About a year.

Q. What was your job?

A. I was on the cracker.

Q. The cracker?

A. The ammonia cracker.

Q. The ammonia cracker?

A. Yes.

Q. In the chemical department?

A. Yes.

Q. When did you join Lodge 66?

A. In July.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th, 1937, and February 26th, 1937?

A. No, sir.

Q. When did you draw your last pay from the plant?

A. I guess it was in March, early March.

1263 Q. Did the company take up your pass at that time?

A. Yes, sir.

Q. Did you go to the plant to get your pass?

A. Yes, sir.

Q. Who gave you your check?

A. I don't know exactly who gave it to me.

Q. Did you talk to anybody there at that time?

A. I don't know who it was.

Q. Did they offer you re-employment?

A. No, sir.

Q. How much was your hourly rate?

A. 49 cents an hour.

Q. How many hours a week did you work?

A. 40.

Q. What was your average weekly pay?

A. About $20.

Q. About $20?
A. Yes.
Q. How much have you earned since February 26th?
A. Since February?
Q. Yes.
A. Not a cent.
Q. Nothing?
A. No, sir.

Q. You are one of the men who occupied the build-
1264 ing between the 17th and 26th of February, are you not?
A. Yes.

Q. You were one of the respondents in the contempt proceedings, and one of the defendants in the injunction case, is that right?
A. Yes.
Q. You are now serving a term in the County Jail for violation of that injunction order, is that right?
A. Yes.
Q. The management did not ask you to stop work on February 17th, did they?
A. I don't know.
Q. The stoppage of work was occasioned by the men taking over the building, is that not right?
A. Say that over again.
Q. Did the work at the plant stop because the men took over the buildings?
A. Yes.
Q. Is that right?
A. Yes.
Q. You have not since been offered re-employment by the company?
A. No, sir.
Q. At any time?
A. No, sir.
1265 Mr. Walsh: That is all.

Crosss-Examination.

Q. (By Mr. Swiren.) You left the buildings on February 26th?
A. Yes, sir.
Q. Did you apply for reinstatement or re-employment at the company since that time?
A. No, sir.

Q. You did not?
A. No.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: Frank Musech.

FRANK MUSECH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Frank Musech?
The Witness: Yes, sir.
Mr. Collins: You were subpoenaed this morning, were you not, to appear here before the Examiner?
The Witness: I was.
Mr. Collins: I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National
1266 Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) How do you spell your last name?
A. M-u-s-e-c-h.
Q. What is your address?
A. 1039 Adams, North Chicago.
Mr. Swiren: You will have to speak louder. I cannot hear you back here.
Mr. Walsh: Keep your voice up a little bit, so everybody can hear you.
Trial Examiner Dudley: There is a room full of people and they all want to hear you. Keep your voice up please.
Mr. Swiren: I cannot hear a thing he is saying back here.
Q. (By Mr. Walsh.) How long were you employed by Fansteel?
A. About 18 months.
Q. What was your job?
A. I was a chemical worker.
Q. You were in the chemical department?
A. Yes, sir.
Q. When did you join Lodge 66?
A. July 4th.
Q. 1936?

A. Yes.

1267 Q. When did you get your last pay from the company?

A. March 6th.

Q. Did the company take up your pass at that time?

A. They did.

Q. Who took up the pass?

A. I don't know the fellow's name.

Q. Did you talk to anybody there at that time?

A. I didn't.

Q. Did the company offer you re-employment at that time?

A. They didn't.

Q. What was your hourly rate?

A. 54 cents.

Q. How many hours a week did you work?

A. 40.

Q. What was your average weekly pay? Just prior to the strike.

A. A little over $21 a week.

Q. $21.

A. Yes.

Q. How much have you earned since February 26th?

A. Nothing.

Q. You are one of the men who occupied the plant during the period from February 17th to February 26th?

A. I was.

Q. You were one of the respondents in the contempt

1268 case, and one of the defendants in the injunction case. were you not?

A. I was.

Q. You are presently confined to the County Jail serving a term for contempt, is that right?

A. Yes, sir.

Q. Did the management ask you to stop work on the 17th of February?

A. They didn't.

Q. Did the stoppage of work occur because of the men taking over the plant?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. Have you been offered re-employment at any time since February 26th?

A. No, sir.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Did you know the plant had reopened after the men had been evicted by the sheriff?
A. I didn't hear the question.
Q. Did you know that the plant reopened after February 26th?
A. No, I didn't.
Q. Do you now know whether it is open?
1269 A. Yes.
Q. Do you know when it reopened?
A. I don't.
Q. After you got out of the buildings on February 26th, did you apply for reinstatement, or re-employment?
A. I didn't.
Q. After that date, did you go to the union headquarters?
A. I don't remember.
Q. Do you not remember whether you ever did?
A. No.
Q. Did you do anything to find out whether the plant was running again?
A. I did.
Q. Did you find out?
A. Yes.
Q. What did you find out?
A. I learned the plant reopened.
Q. When? When did you learn that?
A. I don't remember the date.
Q. Tell us about when it was, approximately?
A. (No answer.)
Q. Let me see if I can help you. You got your pay check when?
A. March 6th.
Q. The plant was partially running at that time, was it not?
1270 A. I couldn't tell.
Q. When did you find out that it was running?
A. About three or four weeks later.
Q. Did you go over to the plant then and ask for re-employment or reinstatement?
A. I didn't
Q. Did you try to get work at the plant?
A. I didn't.

Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Angelo Galbavy.

ANGELO GALBAVY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Angelo Galbavy?
The Witness: Yes.
Mr. Collins: Will you spell the last name for the reporter?
The Witness: G-a-l-b-a-v-y.
Mr. Collins: Were you served with a subpoena this morning—
The Witness: Yes.
1271 Mr. Collins: —to appear here before the Examiner?
The Witness: Yes.
Mr. Collins: On behalf of the witness, I would like to claim his constitutional privilege under Section 11, Paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) Angelo, what is your address?
A. 1215 Adams, North Chicago.
Q. North Chicago?
A. North Chicago.
Q. How long have you been employed by Fansteel?
A. Since 1929.
Q. 1929?
A. Yes.
Q. What is your job?
A. Wire drawer.
Q. You are in the wire department?
A. Yes.
Q. When did you join the union?
A. In July, 1936.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No.

Q. When did you draw your last pay from the company?

1272 A. On the 5th of March, 1937.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go to the plant to get your pay?

A. It was in the main office.

Q. In the main office?

A. Yes.

Q. Did you talk to anybody there at that time?

A. No.

Q. Did they offer to take you back to work?

A. No.

Q. Have you been offered re-employment since the time you got your last pay?

A. No, sir.

Q. What was your hourly rate?

A. 65 cents.

Q. 65 cents an hour?

A. Yes.

Q. How many hours a week did you work?

A. Usually, towards the last, 40 hours a week.

Q. How much was your weekly pay?

A. About $26 a week.

Q. How much have you earned since February 26th, on the outside?

A. $39.

1273 Q. $39.

A. Yes.

Q. How did you earn it?

A. Working for Waukegan Township.

Q. Normally when you are working at Fansteel, do you do any work on the outside?

A. No.

Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are presently confined in the County Jail—

A. Yes.

Q. —on a contempt citation?

A. Yes.

Q. The management did not ask you to quit work on February 17th, did they?

A. What?

Q. The management did not ask you to quit work, on February 17th, did they?

A. No.

Q. The stoppage of work was caused by the men taking over the plant, is that right?

1274 A. That is right.

Q. Have you been offered re-employment at any time since February 26th?

A. Not in the factory.

Q. Not at Fansteel?

A. No.

Q. Are you willing to go back to work, if everybody goes back?

Mr. Swiren: That is objected to.

The Witness: Yes.

Mr. Swiren: That is objected to.

Mr. Walsh: I will withdraw it.

Mr. Swiren: May the answer be stricken, if it appears in the record?

Trial Examiner Dudley: The answer may be stricken.

Mr. Walsh: I thought you wanted that.

Mr. Swiren: I did not ask that question.

Mr. Walsh: Very well. I will withdraw it.

Mr. Swiren: If counsel and the Examiner did not see the difference between that question and my question, I am afraid I have failed.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Swiren.) Did you apply for re-employment after you left the buildings?

1275 A. No.

Q. You knew the plant had reopened, did you not?

A. I seen a lot of strange people going in there. I didn't know what they were doing there.

Q. You did not know whether they were going in there to play a baseball game, or to work, did you?

A. No.

Q. You learned, did you not, that a lot of strange people

do not necessarily mean there is to be a baseball game, did you not?

A. (No answer.)

Q. You found out, did you not, that strange people may have been there for other purposes?

A. They couldn't learn my job.

Q. You didn't try to find out whether somebody was operating the plant or not?

A. I didn't care.

Q. You did not care?

A. No.

Q. If at the time you applied for your pay, or shortly thereafter, the company had offered to re-employ you without any conditions, would you have gone back?

A. They didn't offer me nothing.

Q. If they had offered it to you, would you have gone back without any conditions?

1276 A. I would if everybody would go back that is out.

Q. But not otherwise?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Anton Nagode.

ANTON NAGODE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Anton Nagode, is it?

The Witness: Yes.

Mr. Collins: You were served—

Trial Examiner Dudley: Pardon me, Mr. Collins.

Mr. Collins: Yes.

Trial Examiner Dudley: Will you spell that name?

Mr. Collins: N-a-g-o-d-e. Is that correct?

The Witness: Yes.

Mr. Collins: You were served with a subpoena this morning, were you?

The Witness: Yes.

Mr. Collins: I would like to claim the witness' privilege

under Section 11, paragraph 3 of the National Labor
1277 Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?
A. 435 Waynelow.
Q. Is that in Waukegan?
A. Yes.
Q. How long were you employed by Fansteel?
A. 17 years.
Q. What is your job?
A. Electric furnace operator.
Q. In the sintering department?
A. No; in the brazing department.
Q. The brazing department?
A. Yes.
Q. When did you join the union?
A. In June, 1936.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No, sir.
Q. When did you get your last pay from the plant?
A. March 5th.
Q. Did the company take up your pass at that time?
A. Yes.

Q. Who gave you your last check?
1278 A. I believe the timekeeper, George Schardt.
Q. At the company's office?
A. Yes, sir.
Q. Were you offered re-employment at that time?
A. No, sir.
Q. Did you talk to anybody down there that day about coming back to work?
A. No, sir.
Q. Have you been offered re-employment at anytime by the company since?
A. No, sir.
Q. What was your hourly rate?
A. 70 cents.
Q. How many hours a week did you work?
A. 40.
Q. What was your average weekly pay just prior to the strike?
A. About $28.

Q. $28?
A. Yes.
Q. How much have you earned since February 26th?
A. $26.
Q. What did you do to earn that?
A. Washed walls.
Q. Normally do you do any work outside of the plant?
1279 A. No, sir.
Q. When you are working there?
A. No.
Q. You were one of the men who occupied the plant between February 17 and February 26th?
A. Yes.
Q. You were one of the respondents in the contempt case and one of the defendants in the injunction case, were you not?
A. Yes.
Q. You are presently serving a term in the County Jail?
A. Yes.
Q. The management did not ask you to stop work, did they, on February 17th?
A. No, sir.
Q. The stoppage occurred because the men took over the plant, is that right?
A. Yes, sir.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Did you ever apply for re-employment or reinstatement?
A. You mean, out at the Fansteel?
Q. Yes.
A. No, sir.
1280 Q. Were you willing to go back to work if reinstatement were offered you, without any conditions?
A. I was, as a member of Lodge 66.
Q. What is that?
A. I was, as a member of Lodge 66.
Q. Did it make any difference to you whether the other men went back or not?
A. I would go back with them. I wouldn't go back alone.
Q. You would not go back unless all of the others went back with you, is that it?

A. Then I would go back, yes, sir.
Q. If they all went back, you would go back, but not otherwise?
A. Yes.
Q. You were not willing to return except on that condition?
A. Yes.
Q. Is that right?
A. Yes.
Mr. Swiren: Did you ask him about being a respondent?
Mr. Walsh: Yes.
Mr. Swiren: All right. That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Merrit Pratt.

1281 MERRITT PRATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as ollows:

Direct Examination.

Mr. Collins: State your name.
The Witness: Merritt Pratt.
Mr. Collins: Spell the last name, please.
The Witness: P-r-a-t-t.
Mr. Collins: Were you served with a subpoena to appear before the Examiner here this morning?
The Witness: I was.
Mr. Collins: I claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: It is so granted.
Q. (By Mr. Walsh.) What is your address, Mr. Pratt?
A. 22nd and Dickey Avenue, North Chicago.
Q. How long were you employed by Fansteel?
A. Seven months.
Q. What is your job?
A. Swedging.
Q. When did you join the union?
A. Some time in August.
Q. 1936?
A. 1936.

Q. Did the plant operate between February 17th and
1282 February 26th, 1937?
A. No, sir.
Q. When did you draw your last pay from the plant?
A. I don't know; it was around the 5th of March.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did you go to the plant to get your last pay?
A. I went to the office.
Q. Who gave you your check?
A. I don't know; it was some young fellow; I don't know who it was.
Q. Did you talk to anybody connected with the company at that time?
A. No.
Q. Did the company offer you re-employment at that time?
A. No.
Q. Have they since offered you re-employment, since the time you got your last check?
A. No.
Q. What was your hourly rate?
A. 58 cents.
Q. How many hours did you work a week?
A. We worked over time sometimes. It averaged 40 hours.
Q. What was your weekly pay?
A. $23.20.
Q. How much have you earned since February 26, on the outside.
1283 A. $10, I think.
Q. $10?
A. Somewhere around there.
Q. What did you do to get that?
A. Caddying.
Q. Caddying?
A. Yes.
Q. Normally, when you are employed at Fansteel, do you do any work on the outside?
A. No.
Q. You were one of the men who occupied the plant between February 17th and February 26th?
A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?

A. Yes.

Q. You are presently confined to the county jail on a contempt citation, is that correct?

A. Yes.

Q. Did the management ask you to stop work on the 17th of February?

A. No.

Q. The stoppage was caused by the men taking over the plant—

A. Yes.

Q. —is that right?

A. That is right.

1284 Q. Have you been offered reemployment by the company at any time since you got your last check?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Have you ever applied for reinstatement or reemployment at the company?

A. No, sir.

Q. What was the answer?

A. No, sir.

Q. After you and the others were evicted from buildings 3 and 5, were you willing to return to work without any conditions, and would you have returned if the company had made an offer?

A. Not unless they all went back.

Q. Not unless all of the other men went back?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Robert Pratt.

ROBERT PRATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

1285 *Direct Examination.*

Q. (By Mr. Collins.) Your name is Robert Pratt, is it?

A. Yes.

Q. You are the brother of Merritt Pratt who just testified?

A. Yes.

Q. You were served with a subpoena this morning to appear before the examiner, is that correct?

A. Yes.

Mr. Collins: I would like to claim the witness' privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?

A. Twenty-second and Dickey Avenue.

Q. North Chicago?

A. North Chicago.

Q. How long have you been employed by Fansteel?

A. About 3 years.

Q. What is your job?

A. Swedging.

Q. When did you join the union?

A. It was either in July or August. I just don't remember.

Q. 1936?

A. Yes.

Q. Did the plant operate between February 17th and

1286 February 26th? February 26, 1937?

A. No.

Q. When did you draw your last pay from the plant?

A. I think it was in March.

Q. In March?

A. Yes.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Did you go to the plant to get your check?

A. I did.

Q. Who gave you your check?

A. I just don't know his name; it was some young fellow there.

Q. Did you talk to anybody at the office of the company that day?

A. No.

Q. Did the company offer you reemployment at that time?

A. No.

Q. Was the plant running?

A. I just don't remember whether it was or not at that time.

Q. Has the company offered you reemployment at any time since that time?

A. Yes.

Q. They have?

A. Yes.

Q. You did not accept reemployment?

1287 A. No.

Q. Why did you not accept that reemployment?

A. Because they didn't recognize our union.

Mr. Swiren: What was the question?

The Witness: Because they didn't recognize our union.

Mr. Walsh: I asked him why he did not accept reemployment.

Mr. Swiren: I see.

Mr. Walsh: He said "because they didn't recognize our union."

Mr. Swiren: All right.

Q. (By Mr. Walsh.) What is your hourly rate?

A. 60 cents an hour.

Q. How many hours a week did you work?

A. We were supposed to work 40 hours a week. It was supposed to be a 40-hour week.

Q. What did your weekly pay average, just before the strike?

A. I don't remember. It was around $65 or $70, somewhere around there, for two weeks.

Q. For the two weeks' period?

A. Yes.

Q. That would be somewhere around $32.50 or $35 per week?

A. That was overtime, and everything.

Q. That included overtime?

A. Yes.

Q. How much have you earned since February 26th?
1288 A. About $40.
Q. What did you do to earn that?
A. I was tending bar a few hours at night.
Q. Normally when you are working at the company, do you have any outside employment?
A. No.
Q. You were one of the men who occupied the plant between February 17th and February 26th?
A. I was.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. Yes.
Q. Did the management ask you to stop work on the 17th of February?
A. No.
Q. The stoppage was occasioned by the men taking over the buildings, was it not?
A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Who offered you reemployment, Mr. Pratt?
A. Frank Mack.
Q. Who is that?
A. Frank Mack.
Q. What did you say to him?
1289 A. Well, he asked me if I ever considered going back there, and I told him I did. He said, Well, you better come down and fill out a new application." He said, "They are all doing it."
Q. What did you say?
A. Well, I says, "I don't feel at this time like I should come down."
Q. Is that all?
A. And I said, "I never went through a picket line in my life, and I am getting too old now to start with it."
Q. What else did you say?
A. (No answer.)
Q. Did you say anything else?
A. I just can't remember.
Q. Is that all you remember that you said?

A. That is all I remember at the present time.
Q. You did not discuss union recognition?
A. I don't know.
Q. You did not discuss contracts with him, did you?
A. No.
Q. You did not discuss those things with any other officer or representative or employee of the company other than those who were not engaged in work, is that right?
A. That is right.
Q. You were not willing to go back to work at that time, is that right?
1290 A. That is right.
Q. You say your checks amounted to $65 or $70; those were bi-monthly checks, were they not?
You got a check twice a month?
A. Twice a month.
Q. Sometimes that was for more than two weeks, was it not? Sometimes it would be for a 15 or 16-day period?
A. They would run from a 10-day to a 13-day pay, or sometimes 14.
Q. It would depend upon how much work you did during the period; you did not work every day, is that it?
They worked every day. Saturdays would be overtime.
Q. A 10-day period would be 2 weeks. 13 days would be a little over 2½ weeks, would it not?
A. Yes.
Q. Did you ever apply for reemployment or reinstatement?
A. No, I didn't.
Q. You knew the plant was operating, did you not?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Andrew Rode.

ANDREW RODE, called as a witness for the National
1291 Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Andrew Rode?
A. Yes.
Q. Rode, is that?
A. Yes.
Q. Will you spell it for the reporter, please?
A. R-o-d-e.
Q. The sheriff served you with a subpoena this morning and told you to come in here this afternoon, did he not?
A. Yes.
Mr. Collins: I would like to claim this witness' privilege, if the examiner please, under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) Where do you live?
A. Park Avenue, North Chicago.
Q. How long were you employed at Fansteel?
A. Two years.
Q. What is your job down there?
A. Grinder.
Q. Grinder?
A. Yes.
Q. In the contact department?
1292 A. Yes.
Q. You are a side grinder?
A. Yes.
Q. When did you join the union?
A. In August 1936.
Q. August 1936?
A. Yes.
Q. Did the plant operate between February 17th and February 26th?
A. No.
Q. When did you get your last pay from the company?
A. My last pay?
Q. Yes.

A. Before I went out?
Q. No. When did you get your last pay after you left the plant?
A. In March.
Q. In March?
A. Yes.
Q. Did the company take up your pass at that time?
A. No.
Q. Did you go down to the office to get your check?
A. Yes.
Q. Did the company offer to take you back to work?
A. No, they did not take me back. I never knew
1293 about it when they started work.
Q. You did not know about it when they started working?
A. No.
Q. How much is your hourly rate of pay?
A. $19.60.
Q. You mean, $19.60 a week?
A. $19.60 a week.
Q. How much do you get an hour?
A. 49 cents an hour.
Q. You worked 40 hours a week?
A. Yes.
Q. That is, you worked 5 days, 8 hours a day?
A. Yes.
Q. Have you earned any money since you came out of the plant?
A. (No answer.)
Q. Have you earned any money, outside?
A. No.
Q. No?
A. No.
Q. You are one of the men who was in the plant?
A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?
A. Yes.
Q. You are now in jail?
1294 A. Yes.
Q. When the work stopped that day, did the management tell you to stop work? The management did not tell you to stop work, did they?

A. No.
Q. Work stopped because the men took over the buildings; is that right?
A. That is right.
Q. Has the company offered to take you back at any time since you came out?
A. No. They didn't say nothing about it.
Mr. Walsh: That is all.

Cross-Examination

Q. (By Mr. Swiren) Did you ever go back and apply for reinstatement?
A. No.
Q. What was the answer?
A. No.
Q. You found out that the plant was operating again sometime after the men left the buildings, did you not?
A. No.
Q. You did not know the plant was operating?
A. No.
Q. Do you know whether it is operating now?
A. No, I don't know anything about it.
1295 Q. You did not know anything about it?
A. No.
Q. You did not try to find out?
A. No.
Q. You do not care whether the plant is operating or not, is that right?
A. No.
Q. If you had been offered reinstatement without any conditions after you left the buildings, would you have taken that reinstatement?
A. No; I ain't takin' nothing.
Mr. Swiren: What was that answer, Mr. Reporter?
(The answer was read.)
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
Mr. Walsh: Arvo Romppaine.

ARVO ROMPPAINE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Arvo Romppaine?
A. Correct.
Trial Examiner Dudley: Will you spell it, please?
Q. (By Mr. Collins) How do you spell your first name?
A. A-r-v-o.
1296 Q. Now, spell your last name.
A. R-o-m- a couple of p's-a-i-n-e.
Mr. Swiren: Are there two m's or one m?
The Witness: One.
Q. (By Mr. Collins.) Were you served with a subpoena yesterday to appear in court before the examiner today?
A. I was.
Q. I would like to claim the privilege of the witness under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.
Q. (By Mr. Walsh.) What is your address, Mr. Romppaine?
A. It is the county jail, right now.
Q. I mean, when you are not confined to jail where do you live?
A. 603 McAllister.
Q. How long were you employed by Fansteel?
A. About a year and a half.
Q. What is your job?
A. Well, the last 7 months, I was drawing wire in the wire department.
Q. When did you join the union?
A. I guess it was in about August.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No, sir.
Q. When did you get your last pay from the company?
1297 A. I believe I got it on about March 5th.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about going back to work at that time?

A. I don't think so, at that time.
Q. Did the company offer to take you back at that time?
A. I believe somebody over in the office asked me to fill out an application at that time.
Q. Did you fill out an application?
A. No.
Q. Has anybody connected with the company offered you reemployment since?
Mr. Swiren: That is objected to. This witness has testified he was offered reemployment. I do not know of anything in the Act that requires us to do that every day, or repeatedly during each day.
Mr. Walsh: I want to find out what the facts are.
Mr. Swiren: I do not see that it makes any difference.
Trial Examiner Dudley: Objection overruled. He may answer.
Mr. Walsh: Go ahead.
Mr. Swiren: Will the examiner rule as to how often you are required to ask a man to come back?
Trial Examiner Dudley: The witness may proceed.
The Witness: What was the question?
1298 Mr. Walsh: Read the question.
(The question was read.)
A. No, sir.
Q. (By Mr. Walsh.) What is your hourly rate of pay?
A. 53, I guess.
Mr. Swiren: We object, if the examiner please. This witness testified he has been offered reemployment. I cannot see that it makes any difference.
Trial Examiner Dudley: Objection overruled.
Mr. Swiren: That additional objection is made to all further testimony of this witness, on this phase of the proceeding.
Trial Examiner Dudley: The objection is noted, and it is overruled.
Q. (By Mr. Walsh.) How many hours a week did you work?
A. At least 40.
Q. What was your weekly pay?
A. About $21 or $20.
Mr. Swiren: I did not hear the answer.
The Witness: $21.
Q. (By Mr. Walsh.) About $21?
A. Yes.

Q. How much have you earned since February 26th, on the outside?

A. Well, around $60.

Q. What did you do to earn that?

1299 A. I worked in a nursery for a while, for a few weeks.

Q. When was that?

A. I think I quit working there 2 weeks ago Friday or Saturday.

Q. You were one of the men who occupied the plant between February 17th and February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Yes.

Q. Did the management ask you to stop working on the 17th of February?

A. Not the management, no.

Q. The stoppage of the work occurred by reason of the men taking over the plant—

A. Yes.

Q. —is that right?

A. Yes.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Who asked you to fill out an application, Mr. Romppaine?

A. I can't remember who it was.

Q. Who told you that that was the—withdraw that.

When you were asked to fill out an application, you

1300 were told that an application was necessary to be reinstated, is that right?

A. Yes. They told me to fill it out.

Q. In order to get reinstated?

A. Yes, sir.

Q. You refused to do that?

A. Yes. I said I was—I considered myself a striker there.

Q. You were unwilling to go back to work without any conditions, is that right?

A. Yes. I didn't want to go back to work without union recognition.

Q. By that, you mean you did not want to go back to work without having all the others go back to work at the same time?

A. Yes.

Q. And if the jobs of 40 or 45 of these men had been abolished, and the company would not take them back, you were unwilling to go back, is that right?

A. Yes.

Q. I do not recall whether you said you were in the buildings during the period from the 17th to the 26th of February, when they were taken over by some of the men.

A. I was in there.

Q. You were in there?

A. Yes.

Mr. Swiren: That is all.

1301 Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: If the examiner please, I suggest that we adjourn at this time.

Trial Examiner Dudley: Very well. We will reconvene at 1:45 p. m.

(Thereupon at 12 o'clock noon a recess was taken until 1:45 o'clock p. m.)

After recess.

(The hearing was resumed at 1:45 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Dudley: I will call the hearing to order. May we have as much quiet as possible, please.

Mr. Walsh: I will call Eric Lindberg.

ERIC LINDBERG, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Eric Lindberg?

A. Yes.

Q. Spell the last name, please.

A. L-i-n-d-b-e-r-g.

Q. Were you served with a subpoena, Mr. Lindberg?

A. Yes.

Mr. Collins: Mr. Examiner, I would like to claim

1302 the privilege of this witness under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) What is your address?
A. 715 Washington Street.
Q. Talk up, please, Mr. Lindberg.
A. 715 Washington Street.
Q. How long have you been employed by Fansteel?
A. Eleven months.
Q. What was your job?
A. I was working in the cutting department.
Q. The contact department?
A. Yes.
Q. Did the plant operate between February 17th and February 26th?
A. No.
Q. When did you draw your last pay from the plant?
A. March 5th.
Q. Did the company take up your pass at that time?
A. They did not.
Q. Did you go to the plant to get your pay?
A. I did.
Q. Who gave you your last check?
A. I don't know his name; the paymaster, they call him.

1303 Q. Did you talk with anybody there about coming back to work?
A. I inquired from Luther Henry. I went to talk to him.
Q. Did you talk to him?
A. I did.
Q. What did Luther Henry say to you?
A. Not much. I just went there, and he asked me if I wanted—

Mr. Swiren: Speak up a little louder, please.

Mr. Walsh: Keep your voice up, so Mr. Swiren can hear you back there.

The Witness: He asked me if I wanted to come back to work.

Q. (By Mr. Walsh.) What did you tell him?
A. I said, "No." I says, "No, there is a strike on."
Q. Did he say anything else?
A. No.
Q. How much was your hourly rate of pay?

A. Well, I was working on piecework at the time when the strike broke out. Otherwise, I was getting 53 cents an hour.

Q. How much did you earn on piecework?

Trial Examiner Dudley: How much was that?

Mr. Walsh: 53 cents.

Trial Examiner Dudley: All right.

Q. (By Mr. Walsh.) How much was your average weekly pay, just before the strike?

A. Of course, I was working a lot of overtime there.
1304 It was $22, $21, $20, or something like that.

Q. About $21 a week?

A. Yes, when I was working day work.

Q. Mr. Lindberg, did you get that when you were working piecework?

A. No, not for the last 2 weeks.

Q. During the 2 weeks preceding the strike you did not work piecework?

A. Yes.

Q. Oh; I misunderstood you. How much did you earn, working on piecework?

A. I had $65.43 for 105 hours.

Q. For 105 hours?

A. Yes.

Q. That was your pay just before the strike?

A. Yes.

Q. You are one of the men who were in the plant?

A. Yes. I was in there six days. I went out the 22d of February.

Q. You were one of the respondents in the contempt case, were you not?

A. No, I was not.

Q. Were you one of the defendants in the injunction case?

A. No.

Q. When the plant stopped work on February 17th,
1305 did the management tell you to stop work?

A. No. I wasn't in the building. I walked in afterward.

Q. You went in after the work had stopped?

A. Yes.

Q. Have you ever been offered reemployment since the plant reopened, after the strike?

A. Yes, I have.

Q. That is what you have just told us about, when Luther Henry talked to you?

A. No.
Q. Did somebody else talk to you?
A. Yes.
Q. Who else offered you reemployment?
A. Ed Simms.
Q. He is a foreman over there?
A. Yes.
Q. What did Mr. Simms say to you?
A. He just asked me if I wanted to go back to work, and I says, "No."
Q. Why did you tell him "no?"
Mr. Swiren: That is objected to.
Trial Examiner Dudley: Objection overruled.
The Witness: Well, because I wanted to go on the picket line.
Q. (By Mr. Walsh.) Are you still on strike from that plant?
1306 A. Yes, I am.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) When you talked to Luther Henry —or, rather, after you talked to Luther Henry,—did you fill out an application for reemployment or reinstatement?
A. I didn't.
Q. You never filled one out?
A. I haven't.
Q. What is that?
A. I haven't.
Q. You will have to keep your voice up a little. I cannot hear you back here.
A. All right.
Q. Did you say anything to Simms or Luther Henry other than you have just testified to?
A. Well, of course, Simms was up to the house. He asked me if I won't go back to work, and I said "no."
He says, "Why don't you come down and talk to Luther Henry?" I says, "Luther Henry has always been good to me. That is the least thing I can do." So I went down and talked to him, and when I come in Luther asked me if I wanted to go back to work. I said, "I don't know. I will think about it."
Q. You did not tell him definitely you would not come back, did you?

1307 A. What?

Q. You did not tell him definitely you would not come back?

A. No. I called him up in the office. I told Luther, I said, "I will think it over this afternoon, and I will call you up." Afterwards I called him up and told him I wouldn't come back to work.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

Mr. Walsh: This witness may be excused from further attendance, if the examiner does not mind. He is working. If you want him, Mr. Swiren, let us know and we will send for him.

Mr. Swiren: All right.

Mr. Walsh: I guess that is all.

Mr. Swiren: Just a minute. I would like to ask one more question.

Mr. Walsh: Wait a minute, Mr. Lindberg.

Q. (By Mr. Swiren.) Are you working now?

A. Yes, I am.

Q. How long have you been working?

A. Well, I started work May 3rd.

Q. You started to work May 3rd?

A. Yes.

Q. You have been working ever since?

A. When it don't rain.

1308 Q. What type of work are you doing?

A. I work for a gardner down at Lake Forest.

Mr. Swiren: What was that answer?

Mr. Walsh: He says he works for a gardner down at Lake Forest.

Mr. Swiren: All right.

Q. (By Mr. Walsh.) How much money have you earned since February 26th?

A. I can't say exactly, but it is about $120.

Q. About $120?

A. It is something like that. Of course, I wouldn't say on the penny or the dollar, either. I got $90 so far.

Q. When you were working at Fansteel, did you do any work on the outside?

A. No, I didn't.

Mr. Walsh: That is all.

Q. (By Trial Examiner Dudley.) Is this a permanent position that you have?

A. No.
Q. What are you doing?
A. I work in the garden.
Q. You work in the garden?
A. Yes. I may be laid off tomorrow, for all I know.
Trial Examiner Dudley: That is all. Have you anything further, Mr. Walsh?
1309 Mr. Walsh: No.
Mr. Swiren: That is all.
Trial Examiner Dudley: The witness is excused from further attendance. If we need you, Mr. Lindberg, we will let you know.
The witness: All right.
(Witness excused.)
Mr. Walsh: Alvar Romppaine.

ALVAR ROMPPAINE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) State your name, please.
A. Alvar Romppaine.
Q. Spell your first name, please.
A. A-l-v-a-r.
Q. Now spell your last name.
A. R-o-m-p-p-a-i-n-e.
Q. Were you subpoenaed to appear here today?
A. Yes.
Mr. Collins: I would like to claim the witness' privilege, Mr. Examiner, under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
1310 Q. (By Mr. Walsh.) What is your address?
A. 603 McAllister Avenue, Waukegan.
Q. How long have you been employed by Fansteel?
A. A little over 8 months, I believe.
Q. What was your job?
A. It was—well, I was cleaning rugs and sheets. I worked on the ammonia cracker.
Mr. Swiren: Speak up a little louder, Mr. Romppaine.
The Witness: I worked on the ammonia cracker, and cer-

tain shifts, on the midnight shift, and the afternoon shift. I worked in the hydrogen house, all three together.

Q. (By Mr. Walsh.) So, as I understand you, you were in several departments, is that right?

A. Yes. I worked taking care of the furnace in different departments.

Q. When did you join the union?

A. I joined it about in January 1937.

Q. Did the plant operate between February 17th and February 26th?

A. No, it didn't.

Q. When did you get your last pay?

A. I believe it was about the 5th of March.

Q. Did the company take up your pass at that time?

A. Yes. They took my pass up on the check I got before the past pay.

1311 Q. The check before the last one?

A. Yes.

Q. Do you know what that date was?

A. Oh, it was a few days after, about the 20th—no. It was about the 1st of March, I believe.

Q. About the 1st of March?

A. Yes.

Q. Did you go down to the plant to get your pay?

A. Yes. I went in the office.

Q. Who gave you your check?

A. George Schardt.

Q. Is he the paymaster?

A. Well, no. He is not the regular paymaster that comes around the plant.

Q. Did you talk to anybody connected with the company about going back to work?

A. No.

Q. Have you been offered reemployment by the company since?

A. No.

Q. How much was your hourly rate of pay?

A. About 49 cents an hour.

Q. How many hours a week did you work?

A. I worked 40 hours a week.

Q. What did your weekly pay amout to?

A. About $19. and some cents.

1312 Q. How much have you earned since February 26th?

A. I would say approximately between—I couldn't say for sure, but I estimate around $55 or $60.

Q. What did you do to earn this money?

A. I worked in the Waukegan nursery.
Q. Are you one of the men who occupied the plant between February 17th and February 26th?
A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, is that right?
A. Yes.
Q. When the work stopped on February 17th, the management did not tell you to stop work, did they?
A. No, they didn't.
Q. The stoppage occurred because men took over the buildings, is that correct?
A. Yes.
Mr. Walsh: You may inquire.

Cross Examination.

Q. (By Mr. Swiren.) You did not apply for reinstatement or reemployment, did you, Mr. Romppaine?
A. No, I didn't.
Q. If you had been affirmatively offered reinstatement or reemployment without any conditions immediately after you left the building, would you have accepted such re-employment or reinstatement?
1313 A. No, not unless they gave me conditions, that they would reinstate the men that went out.
Q. You mean, all of the men who went out?
A. Yes.
Q. Would it make any difference—strike that out. Then, as I understand it, you want all of the men reinstated, whether their jobs have been abolished or not, before you are willing to go back to work, is that right?
A. Yes; all the men that went out on protest.
Q. By "protest," you mean the men who seized and held buildings 3 and 5, do you not?
A. Yes.
Q. Do you include the men who resisted the sheriff, as the men who engaged in the protest, too?
A. Yes; the men who were in the buildings at the time.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Luther Small.

LUTHER SMALL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) You are Luther Small?
A. Right.
1314 Q. Were you served with a subpoena, Mr. Small?
A. I was.
Mr. Collins: I would like to claim the privilege of the witness under section 11, paragraph 3, of the National Labor Relations Act, if the examiner please.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh.) What is your address?
A. 104 Sumac.
Q. How long were you employed by Fansteel?
A. Slightly over 2 years.
Q. Two years?
A. Yes.
Q. What was your job?
A. I was an electric welding furnace operator.
Q. In what department, Mr. Small?
A. The contact department.
Q. When did you join the union?
A. Sometime in July; somewhere around the first part of July 1936.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No, sir.
Q. When did you draw your last pay?
A. Somewhere around the first part of March.
1315 Q. Did the company take up your pass at that time?
A. They did.
Q. Did you talk to anybody there about coming back to work when you got your last check?
A. Not at the factory.
Q. Have you been offered reemployment down there?
A. I don't know if it was actually reemployment that was offered, but there was two men working there that came around to see me at my home, and asked me if I would go back to work.
Q. Who were those men?

A. One was Victor Oliver, and one was Robert Johnson.
Q. Are they employees of the company? They are not officers, are they?
A. They were at that time employees.
Mr. Swiren: Which Johnson is that?
The Witness: Robert Johnson.
Q. (By Mr. Walsh.) What was your hourly rate of pay?
A. 63 cents an hour.
Q. How many hours did you work?
A. At the last we were working quite a few hours. The average, of course, was 40 hours for a standard week.
Q. What was your average pay check?
A. You mean, the average weekly check?
Q. Yes, just before the strike.
A. Before the strike it was quite high, on account
1316 of a lot of overtime. In fact, the last one amounted to slightly over $40 per week; but the 40-hour rate would make $25.20 per week.
Q. Do you know whether the company is operating overtime in your department now?
A. I couldn't say.
Q. How much have you earned since February 26th?
A. Approximately—
Mr. Swiren: That is objected to, if the examiner please, on the grounds previously mentioned.
Trial Examiner Dudley: Objection overruled.
Mr. Swiren: He has testified that he was asked to return to work, and did not do so.
Trial Examiner Dudley: Objection overruled.
Mr. Walsh: Does the respondent assume that the employees who solicited this man to come back to work were acting on the instructions of the company?
Mr. Swiren: I have not the slightest idea of what they were acting on. I do not know the men.
Mr. Walsh: They were not officers of the company. They were just employees there. Did they have authority to solicit this man to return to work?
Mr. Swiren: Yesterday, or the day before, Mr. Walsh quite strenuously insisted on bringing forward statements of an apprentice from the maintenance department, attempting to bind the company.
1317 I am a little bit amazed at his being concerned about the record now with respect to other employees. I think he will have to make his own record.

Trial Examiner Dudley: Objection overruled.
Mr. Walsh: Read the last question, please.
(The question was read.)
A. About $150.
Q. (By Mr. Walsh.) What did you do to earn that money?
A. I was a gardener's helper.
Q. Normally, do you do any outside work when you are working at Fansteel?
A. Very little, if any.
Q. For pay?
A. Yes.
Q. You are one of the men who occupied the plant between February 17th and February 26th?
A. I am.
Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. Yes.
Q. Is that right?
A. Yes.
Q. You are presently confined to the county jail—
A. Right.
Q. —on a contempt citation?
1318 A. Yes, sir.
Q. When the work stopped on February 17th, did the management ask you to stop work?
A. No, sir.
Q. The stoppage occurred because the men took possession of the plant, is that right?
A. Yes.
Mr. Walsh: That is all; you may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) When the two men asked you to return to work, you declined, is that right?
A. Yes, sir.
Q. At no time did you come to the plant and apply for reinstatement or reemployment, did you?
A. No, sir.
Q. I take it from your refusal to go back when you were asked by the two former employees that you were not willing to go back to work unconditionally, is that right?
A. Not under the existing conditions; no sir.

Q. What building were you in from February 17th to February 26th?

A. I was in building 5 practically all the time.

Q. Who designated you as corporal in that building?

A. Well—

Mr. Walsh: I object, unless it is shown he was corporal.

1319 Q. (By Mr. Walsh.) Were you?

A. Yes, sir.

Mr. Swiren: Is that better, Mr. Walsh?

Mr. Walsh: Much better. Thank you.

Q. (By Mr. Swiren.) Now that you have explained to Mr. Walsh that you were corporal, tell us who designated you as corporal.

A. No one told me I should be corporal.

Q. You took the title yourself, did you?

A. No sir. I was asked if I would assume that job.

Q. Who asked you?

A. There were several of the fellows there and we had a kind of a meeting.

Q. Tell us who asked you.

A. I don't know just offhand.

Q. Can you tell us one?

A. Charles Warner.

Q. Did anybody else ask you?

A. I don't remember just who else asked me, but I know there was quite a few.

Q. None of the company officers, or nobody from the company management asked you to be corporal, did they?

A. No.

Q. As corporal, did you go about any duties to produce any products in the plant?

A. No, sir.

1320 Q. You knew when the sheriff came there the first time, did you not?

A. Yes.

Q. When was that, on what day?

A. I am not sure. I believe it was the 18th of February.

Q. That is the day he served the injunction on you, is that right?

A. I believe so.

Q. And the next day he came with an attachment writ, or an arrest writ, is that right?

A. I don't know. I didn't see that, or know of it.

Q. You heard about it since, did you not?
A. Oh, yes.
Q. You heard about it in the plant, while you were there, did you not?
A. Well, yes, I did.
Q. Did you let the sheriff and his deputies in either on the 18th or 19th?
A. I had no occasion to let them in; no, sir.
Q. Did you or any of your associates in the building?
A. No, sir; not that I know of.
Q. Each man was not working separately, was he?
A. No. It was a group.
Q. You were working as a group, were you not?
A. Yes, sir.
1321 Q. The sheriff tried to get in on the 19th, did he not?
A. I think he did.
Q. He was not permitted to come in, was he?
A. Why, no.
Q. The doors were barred?
A. No, sir.
Q. They were not barred? They were open?
A. Part of the time, yes.
Q. When the sheriff was trying to get in, were they open?
A. I couldn't say. I wasn't near the door at that time.
Q. You did see him or any of his deputies get in, did you?
A. No, sir.
Q. Did anything else happen that day?
A. I don't understand just what you mean.
Q. Did anything unusual happen on the 19th, besides the sheriff's not being able to get in the plant?
A. Yes. There was a gas attack, I believe it is called.
Q. The sheriff used gas to try to get you out of the building, did he not?
A. That is right.
Q. Is that correct?
A. Yes.
Q. Did you leave?
A. Not on the 19th; no, sir.
Q. You stayed there, eating and sleeping, but not do-
1322 ing any productive work from the 17th of February until the 26th of February, is that right?
A. That is right.
Q. During that period you carried on your service as corporal?

A. Yes, sir.

Q. Did you do anything to the windows on the day of the 19th?

A. Yes. There were quite a few windows broken.

Q. From the inside?

A. They were started to be broken from the outside.

Q. By the gas shells coming in?

A. That is right.

Q. Then the men on the inside proceeded to break as many of the rest as they could, to get air, is that right?

A. As many as we thought necessary, yes.

Q. That was quite a good many, was it not?

A. I think there was quite a few on that one floor, yes.

Trial Examiner Dudley: Mr. Swiren, I thought you were going to forego all of this, in order to save time.

Mr. Swiren: We think it is important as to reinstatement. We will only do it with respect to some of these men whom we know have such unusual information.

This is part of the problem of reinstatement.

Mr. Walsh: I will be glad to recall them at any time you want, if you think it is necessary for your side of the case to go into it.

1323 Mr. Swiren: I do, with respect to some of these men.

Trial Examiner Dudley: That is opposed to your stipulation, is it not?

Mr. Swiren: Does the examiner think there is no connection whatever between the violation of law by the seizure of the plant and the resistance of the sheriff, and the refusal to offer these men reemployment?

Trial Examiner Dudley: You have that evidence in your exhibits, and you also have stipulated that you can bring in all of the affirmative defense you want by recalling these men.

You are just cluttering up the record by bringing it in at this time.

Mr. Swiren: I think the record is being cluttered up by testimony about not being offered reinstatement with respect to men who violated the law by engaging in the seizure of the plant.

That is all the cluttering up that I can see.

Mr. Walsh: Two wrongs do not make a right, Mr. Swiren.

Trial Examiner Dudley: I will instruct the witness that he does not need to answer further questions along this line.

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: I will instruct the witness he does not have to answer further questions along this line.

You can recall him when you get ready to put in your affirmative defense, for such questions as you see fit at that time.

1324 Mr. Swiren: We think it is proper cross-examination with respect to the subject matter of the direct examination.

Does the examiner rule that is not so?

Trial Examiner Dudley: Yes.

Mr. Swiren: I am going to ask another question along that line, so my record is perfectly clear on the subject.

Q. (By Mr. Swiren) The sheriff returned and made an effort to get you out of the building on the morning of the 26th of February, did he not?

Mr. Walsh: Thet is objected to.

Trial Examiner Dudley: I will allow him to answer that one question.

The Witness: He did.

Q. (By Mr. Swiren) When did you leave?

Mr. Walsh: I object to that.

Trial Examiner Dudley: He may answer that.

Mr. Walsh: The testimony is he did not leave until the 26th of February.

Mr. Swiren: It is the 26th of February I am talking about now, Mr. Walsh.

Mr. Walsh: I beg your pardon.

Q. (By Mr. Swiren) That was when you and the rest in the building left?

A. Yes.

Q. Is that right?

1325 A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Roy Brown.

ROY BROWN, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, testified further as follows:

Direct Examination.

Mr. Walsh: This witness has been sworn, and has previously testified, Your Honor.

Trial Examiner Dudley: Very well.

Q. (By Mr. Walsh) How long were you employed by Fansteel, Mr. Brown?

A. About 10 years.

Q. What was your job?

A. I worked in the wi.. department, annealing wire.

Q. When did you join the union?

A. In July 1936.

Q. Did the plant operate between February 17th and February 26th?

A. No.

Q. When did you get your last pay?

A. March 5th.

1326 Q. Did the company take up your pass at that time?

A. Yes. They took it up.

Q. Did you go to the plant to get your pay?

A. Yes.

Q. Who gave you your check?

A. George Schardt.

Q. Did you have any talk with him about going back to work at that time?

A. No.

Q. Have you been offered reinstatement in the plant?

A. Yes. Since then, I have.

1327 Mr. Swiren: You will have to speak louder. I cannot hear you.

Mr. Walsh: Keep your voice up, Mr. Brown.

The Witness: All right.

Q. (By Mr. Walsh.) You say you have been offered reinstatement?

A. I have been offered reinstatement.

Q. Who offered you reinstatement?

A. Florin Schardt, my foreman.

Q. I believe you testified about that the other day, did you not?

A. Yes.
Q. What is your hourly rate of pay?
A. 58 cents.
Q. You work 40 hours a week?
A. Yes.
Q. What did your weekly pay amount to?
A. $23.20.
Q. How much money have you earned since February 26th?
A. None.
Q. You were one of the men who occupied the plant between February 17th and February 26th, were you not, Mr. Brown?
A. Yes.
Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
1328 A. Yes.
Q. When the work stopped on the 17th of February, did the management tell you to stop work?
A. No.
Q. The stoppage was caused by the men taking possession of the buildings, buildings 3 and 5, was it not?
A. Yes.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) Who offered you reinstatement?
A. Florin Schardt, the foreman of my department.
Q. The foreman of your department?
A. Yes.
Q. You did not accept that offer at that time?
A. (No answer.)
Q. You did not go back to work?
A. I did not go back to work, no.
Q. Did you go back and apply for re-employment or reinstatement at any time?
A. No.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Lester Crump.

1329 LESTER CRUMP, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins.) Your name is Lester Crump?
A. Yes.
Q. Were you served with a subpoena this morning?
A. I was.

Mr. Collins: Mr. Examiner, I would like to claim the privilege of the witness under Section 11 paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The witness is granted the privilege.

Q. (By Mr. Walsh.) What is your address?
A. 1510 Hamilton Court.
Q. You will have to keep your voice up. Will you give your address again?
A. 1510 Hamilton Court.
Q. How long have you been employed by the Fansteel Corporation?
A. About a year and three months.
Q. What was your job?
A. Electrician's helper.
Q. In the maintenance department?
A. In the maintenance department.

1330 Q. When did you join the union?
A. In the first part of July.
Q. Did the plant operate between the 17th and 26th of February?
A. It did not.
Q. When did you draw your last pay?
A. March 5th.
Q. Did the company take up your pass at that time?
A. Not at that time; earlier.
Q. They took it up earlier?
A. Yes.
Q. Did you talk to anybody about returning to work?
A. No, sir.
Q. Either at the time of the first pay you got after you got out of the plant, or the last pay?

A. No.
Q. Have you since been offered re-employment?
A. No, sir.
Q. What was your hourly rate of pay?
A. 65 cents an hour.
Q. Did you work 40 hours a week?
A. Well, 40 hours was an average week, but there was overtime.
Q. What did your weekly pay average just before the strike?
A. About $32.00 a week.
1331 Q. How much money have you earned since February 26th?
A. Well, I estimate that at $100.
Mr. Swiren: How much?
The Witness: $100.
Mr. Swiren: Please speak up a little. I cannot hear you.
Q. (By Mr. Walsh.) What did you do to earn that?
A. Well, I took a job as a gardener's helper, and then I went to driving a truck.
Q. Normally when you are working at the plant, do you do any outside work for pay?
A. No, sir.
Q. Are you one of the men who occupied the buildings between February 17th and February 26th?
A. I am.
Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. I was.
Q. When work stopped on the 17th of February, did the management ask you to stop work?
A. No, sir.
Q. The stoppage was caused by the men taking over the plant, is that right?
A. Right.
Q. Have you ever been offered re-employment since that time?
A. No.
1332 Mr. Walsh: You may inquire.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 426

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FANSTEEL METALLURGICAL CORPORATION

Vol. II

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6606

FANSTEEL METALLURGICAL CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Counsel for Petitioner:
MR. BENJAMIN V. BECKER,
MR. MAX SWIREN,
MR. DON M. PEEBLES,
MR. HAROLD M. KEELE,
MR. SIDNEY H. BLOCK,

Counsel for Respondent:
MR. CHARLES FAHY,

Petition for Review of order of the National Labor Relations Board.

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Cross-Examination.

Q. (By Mr. Swiren.) Did you ever apply for reinstatement or re-employment at the company?
A. I did not.
Q. You did not?
A. No.
Q. If after you and the others were evicted from the building the company had offered to reinstate you without any conditions, were you willing to return to work?
A. I didn't get the question.
Mr. Swiren: Read the question.
(The question was read.)
A. No, not as an individual.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: I will recall Raymond DuBois.

RAYMOND E. DU BOIS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You have already been sworn, have you not?
1333 A. Yes.
Q. How long were you employed by Fansteel?
A. Since Armistice Day, 1935; that is November 11th.
Q. You are a toolmaker?
A. Yes.
Q. You work in the tool room?
A. Yes.
Q. When did you join the union?
A. About the middle of August, I think it was.
Q. 1936?
A. Yes.
Q. Did the plant operate between February 17th and February 26th?
A. No.

Q. When did you draw your last pay?
A. I don't know. It was a week or so after—it must have been around March 10th.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Who gave you your last check?
A. The timekeeper.
Q. Did you talk to anybody about returning to work?
A. No.
Q. Have you been offered re-employment?
A. No, sir.
1334 Q. How much was your hourly rate of pay?
A. 77.
Q. Cents per hour?
A. Yes.
Q. Did you work 40 hours a week?
A. Yes.
Q. How much would your weekly pay amount to?
A. Well, I think it was around $30.
Q. How much have you earned since February 26th?
A. About $50.
Q. What were you doing?
A. Well, I contracted a job to put an arch-way into a man's house, and I worked for the Christianson Machine Company, up until I was put in jail. That was about four days work, I think; four or five days work.
Q. You have earned a total of how much?
A. $50.
Q. You are one of the men who occupied the buildings between February 17th and February 26th, is that correct?
A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?
A. Yes.
Q. When work stopped on the 17th of February, the management did not ask you to stop work, did they?
1335 A. No.
Q. The stoppage was caused by the men taking over the plant, is that right?
A. Yes.
Q. Have you been offered reinstatement from the plant?
A. No, I have not.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Did you ever apply for reinstatement or re-employment?
A. No.
Q. What?
A. No.
Q. If after the buildings had been evacuated the company had offered you employment without any conditions attached, would you have accepted that offer?
A. No, sir.
Mr. Swiren: That is all.
Q. (By Trial Examiner Dudley.) Mr. DuBois, is this position with the Christianson Machine Company a permanent position, or do you know?
A. It should have been permanent, as a toolmaker, yes.
Q. Are you employed by them now?
A. No. They laid me off because I didn't attend my work.
Q. Do you know whether you can get that position
1336 when you are released from court here?
A. No, I don't. I couldn't tell you that. I haven't seen them.
Q. Are you out now on bond, or are you still in jail?
A. I am out on bond.
Q. Have you gone down and seen anybody at the Christianson Machine Company yet?
A. No, I haven't. I have been subpoenaed into court. I didn't go down.
Trial Examiner Dudley: That is all.
Q. (By Mr. Swiren.) When did you get out of jail?
A. Yesterday.
Q. What time?
A. I guess it was day before yesterday, wasn't it?
Q. The day before yesterday?
A. Day before yesterday.
Q. You have been in court all the time since then?
A. Most of the time.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: I will recall John Kondrath.

	Offered in evidence at page	Reproduced at page
No. 7—Original injunctional writ directed to the National Labor Relations Board and its agents	130	1599
No. 8—Injunctional order directed to the National Labor Relations Board and its agents	130 1032	1600
No. 9—A review of strikes in 1935	200	1602
No. 10—Mimeographed sheet entitled "Table 6—major issues involved in strikes beginning in 1936," which is an excerpt from the Monthly Labor Review of May, 1936, page 1308	200	1631
No. 11—Application blank for membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America	222	1632
No. 12—Copy of contract	1061	1633
No. 13—Booklet of American Steel & Wire Company "Plan of Employe Representation"	255	1635
No. 14—Letter, September 22, 1936, Fansteel Corporation to employees	259	1644
No. 15—Paper entitled "A plan of employee representation which has been pronounced successful in a large number of plants	260	1646
No. 16—Charter of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America	282 491	1653
No. 17—Revised contract submitted by the Union	287	1654
No. 18—Membership cards dated September 10th and prior thereto (84 cards)	310 1064	1656
No. 19—18 membership cards without date	310 1377	1657

	Offered in evidence at page	Reproduced at page
No. 20—Membership cards dated subsequent to September 10, 1936	310 1064	1658
No. 21—Letter from Fansteel to the National Metal Trades Association dated April 20, 1937	352	352 1659
No. 22—Letter dated April 22, 1937, from Aitchison to National Metal Trades Association	353	1660
No. 23—Application of Fansteel for membership in National Metal Trades Association	355	1660
No. 24—Letter to Fansteel Corporation from National Metal Trades Association advising of election to membership, dated March 31, 1937	358	1666
No. 25—Minutes of meeting of Lodge 66 on March 3, 1937	472	1668
No. 25(a)—Letter of March 3rd presented by Lodge 66 to the Company	1062	1669
No. 26—Letter from Fansteel replying to proposal of March 3, 1937	475	1669
No. 26(a)—Letter of March 5th presented by Lodge 66 to the Company	1062	1671
No. 27—Stenographic report of meeting of March 5, 1937	476	1672
No. 28—Reply of Company to communication of proposal submitted on March 5, 1937	476	1673
No. 29—Letter from John Fay Harris addressed to Fansteel, dated March 18, 1937	495	495 1674
No. 30—Constitution, by-laws and declaration of principles of National Metal Trades Association	512	1675
No. 31—Certificate of Incorporation of Rare Metal Workers of America, Local No. 1	930	1696

	Offered in evidence at page	Reproduced at page
No. 32—Rare Metal Workers' membership card of Laverne Huff	959	1699
No. 33—Form of ballot used in Rare Metal Workers' meeting on April 15, 1937	1032	1701
No. 34—Front page of Waukegan News Sun of March 10, 1937	1041	1703
No. 35—Letter of discharge to R. Holm, Sr. dated February 25, 1937	1088	1706
No. 36—Document prepared by company counsel entitled "Range of Pay of Employees of Fansteel Metallurgical Corporation"	1202	1707
No. 38—Clipping from Waukegan newspaper of February 26, 1937, incorporating statements of management	1337	1707
No. 39—Paper entitled "Permit to work overtime" to be filled out whenever Mr. Holm had a man work overtime	1454	1709
No. 40—Memorandum of information with respect to number of employees not working on February 17th who were hired on the reopening of the plant	1482	1711
Nos. 41-A to 41-F—Pages from record book of Evelyn Graimer from January 4th to February 16th reflecting amount of work done by her on a piece-work basis	1496	1713
No. 42—By-Laws of Rare Metal Workers of America, Local No. 1, Lake County, Illinois	1499	1719
No. 43—Opinion of the court in the Circuit Court of Lake County in the case entitled "Fansteel Metallurgical Corporation, plaintiff, v. Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al., respondents," Gen. No. 37551	1502	1724

EXHIBITS OFFERED IN EVIDENCE BY FANSTEEL METALLURGICAL CORPORATION, RESPONDENT.

	Offered in evidence at page	Reproduced at page
No. 1—Contempt order entered in injunction proceedings in Circuit Court	128 1343	1738
No. 2—Final decree entered in injunction proceedings in Circuit Court	128 1343	1762
No. 5—New gate card issued to Mondro	1515	1778
No. 6—New gate pass issued to Frances Fellens	1515	1779
No. 7—Stipulation of facts and exhibits A, B, C, D attached thereto	1088	1779
No. 8—Photograph of Buildings taken after February 26th	1112	1805
No. 9—Photographs of buildings	1112	1807
No. 10—Wire drawing spool	1112 1327	1809
No. 11—Sharp edged tool known as "end mill"	1112 1327	1811
No. 12—End mill tool	1112 1327	1813
No. 13—Photograph of interior of Building 3 on February 26th	1112	1815
No. 14—Photograph showing interior of Building 6 on February 26th	1112	1817
No. 15—Interior of Building 3 showing fire extinguisher	1112	1819
No. 16—Picture of van load of living and heating articles brought in by sit-downers	1112	1821
No. 17—North side of Building 3 on February 26, 1937	1112	1823

	Offered in evidence at page	Reproduced at page
No. 18—Picture of south view of Building 3 on February 26, 1937	1112	1825
No. 19—Picture of west view of Building 3 on February 26, 1937	1112	1827
No. 20—List of names of employees in cutting department	1194	1829
No. 21—Chart showing comparative costs of operation of the cutting department under regime when men were doing work and under present regime with women doing the work	1194	1830
No. 22—Chart showing comparative costs of grinding under regime when men were used and under plan whereby women are used	1194	1830
No. 23—List of men in old maintenance department who have been replaced by one carpenter, one electrician and a helper for each	1194	1831
No. 24—List of men who did not return to work in the tool department	1194	1831
No. 25—Schedule showing breakdown or analysis of production employees of Fansteel and Vascoloy-Ramet	1194	1832
No. 26—Excerpt from "Racine Journal-Times", Feb. 20, 1937	1211	1833
No. 27—Excerpt from "Waukegan News-Sun" Feb. 20, 1937	1211	1835
No. 28—Excerpt from "Chicago American" Feb. 26, 1937	1211	1837
No. 29—Excerpts from "Herald & Examiner" Feb. 27, 1937	1211	1841
No. 30—Order dated November 23rd directed to Mr. Holm and signed by Mr. Anselm calling attention to orders given him under Respondent's Exhibit 34	1227	

	Offered in evidence at page	Reproduced at page
No. 30-A—Order in handwriting of Mr. Anselm written February 11th instructing Mr. Holm to tighten up either by calking or installing a deflector inside certain windows in the contact department, also mentioning complaint of girls that location is too cold to work in and that the center of the room is too hot.....	1227	1843
No. 30-B—Order dated 1/25/36 directed to Mr. Holm instructing him to install a new rubber ring in the dry pipe valve in Building 11.....	1227	1843
No. 30-C—Order directed to Mr. Holm calling for a partition in the basement between the cleaning units and the centerless grinder....	1227	1844
No. 30-D—Order directed to Mr. Holm and dated June 20, 1936, calling for a wash bowl in the toilet room in Building 5, on the first floor, to remove one toilet, and other work	1227	1844
No. 30-E—Order directed to Mr. Holm and signed by Luther Henry, dated September 1, 1936, calling for change of pulley on big grinder in the basement	1227	1845
No. 30-F—Order directed to Mr. Holm and signed by Mr. Dowe, dated January 15, 1936, calling for six braces or supports for water jackets on furnaces	1227	1845
No. 30-G—Order directed to Mr. Holm, dated March 11, 1937, instructing him to repair three steam lines which were leaking badly and to install a new door by the fire escape exit on the fourth floor of Building 5	1227	1846
No. 31—Inter-Office Correspondence to Holm dated October 15, 1936.....	1227	1846
No. 32—Inter-Office Correspondence dated Nov. 23, 1936 to Holm	1227	1847

	Offered in evidence at Page	Reproduced at Page
No. 33—Inter-Office Correspondence Order to Holm and signed by Mr. Anselm, dated December 9, 1936, to use a new form for reporting labor on the various jobs	1227	1848
No. 34—Order directed to Mr. Holm and signed by Mr. Anselm, dated October 7, 1936, listing a number of jobs to be done and instructing Holm to install suitable insulation in the die polishing room, under carpenter work, and also to repair sky light in Building 6	1227	1848
No. 35—Company's authority to pay Jasper Leskovec, explaining that he was laid off for a reduction in force on November 19, 1936, initialed by Luther Henry and signed by Mr. Anselm, dated 1/26/37	1227	1850
No. 36—Check payable to the Holy Family Church in the amount of $10.00, signed by Lawrence Bristol as Treasurer, drawn on the First National Bank of Waukegan and dated May 21, 1937	1321	1851
No. 37—Check to the National Office Supply Company in the amount of $3.60, signed by Lawrence Bristol as Treasurer and dated June 1st	1321	1853
No. 38—Check payable to Bert Holt (in charge of North Chicago Auditorium) in the amount of $3.00, drawn on the First National Bank of Waukegan and dated June 1st	1321	1855
No. 39—Excerpt from Section 376 of the Criminal Code of the State of Illinois known as the "Intimidation Section"	1329	1857
No. 40—Excerpt (or printed booklet itself) from Section 46 (referred to in book as Section 139 and entitled "Conspiracy to do Illegal Acts")	1329	1857

	Offered in evidence at page	Reproduced at page
No. 41—List of persons named in membership cards submitted in evidence as Board's Exhibits Nos. 18, 19 and 20, who are no longer employed by company, the reason of their not being so employed, and the dates of severance of the employment	1339	1859
No. 42—Pink card of Orlin Swanson showing dues paid by various members of Lodge 66	1515	1861
No. 43—196 cards from September 1st to September 15th, excluding foremen, which were in the racks adjoining the clocks in Buildings 3 and 5 (production and maintenance employees)	1519	1552
No. 44—11 foremen cards of same group as those mentioned in Exhibit No. 43	1519	1552
No. 45—197 cards of production and maintenance employees for the last half of September, 1936	1519	1552
No. 46—11 foremen cards for same group as those mentioned in Exhibit No. 45	1519	1552
Intermediate Report by Trial Examiner dated Sept. 2, 1937	1863	
Application of Fansteel Corporation for extension of time for filing exceptions and letter stating same was denied	1905	
Statement of Exceptions of Fansteel Corpn. to Intermediate Report, etc.	1907	
Motion of Lodge 66 of The Amalgamated Ass'n. of Iron, Steel & Tin Workers to extend time for filing Exceptions to Intermediate Report	1939	

Statements of Objections and Exceptions of Lodge 66 of The Amalgamated Ass'n. of Iron, Steel & Tin Workers 1941
Order extending time for filing exceptions by Amalgamated Association to Intermediate Report.....1943
Decision, Findings of Fact and Conclusions of law.....1944
Order dated March 14, 1938, to cease and desist.....1970
Affidavit of service and Post Office return receipt...1972-1973
Certificate of National Labor Relations Board.....1975

JOHN A. KONDRATH, recalled as a witness for the National Labor Relations Board, being previously duly sworn, estified as follows:

1337 *Direct Examination.*

Q. (By Mr. Walsh.) You are the same John A. Kondrath who has testified before, are you not?
A. Yes.
Q. I believe you testified that you were employed 12 years by the Fansteel Company as a machinist?
A. Yes.
Q. You worked in a tool room, is that right? Is that what you call it, or is it the machine shop?
A. Well, I worked in different departments. I wasn't classed as a machinist all the time.
Q. Just before the strike, were you a machinist?
A. Yes.
Q. Working in the tool, room?
A. Yes.
Q. The plant did not operate between the 17th and 26th of February, did it?
A. No.
Q. When did you draw your last pay from the company?
A. About the middle part of March, I believe.
Q. Did the company take up your pass at that time?
A. They did.
Q. Who gave you your last check?
A. Schardt.
1338 Q. Did you talk to him or anybody else about coming back to work?
A. No, I didn't.
Q. Have you been offered re-employment by the company?
A. No.
Q. How much was your hourly rate?
A. 68 cents an hour.
Q. Did you work 40 hours a week?
A. Yes.
Q. What was your average weekly pay?
A. About $27.
Q. How much have you earned since February 26th, 1937?
A. $5.00.
Q. What did you do to earn that?

Mogel, Nate 862
Moxey Frank 905, 1492
Musech, Frank 549
Nagode, Anton 555
Ohlson, Theodore 755, 1434
Osenek, Frank 991
Petraitis, Joe 752, 1427
Pratt, Merritt 558
Pratt, Robert 561
Puntarich, Bartol 735
Rayner, Harry 719
Recktenwald, Isabella 804
Richveis, Joseph 600, 884
Rode, Andrew 565
Romppaine, Alvar 576, 1034
Romppaine, Arvo 568, 1033
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Smith, George William 445, 652
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Strickland, Harold 980
Sylvin, Theodore 928
Taylor, Jack 851
Van Treeck, William Leo 987
Warner, Charles 507
Warner, Charles T. 611
Wells, Paul 457, 616
White, Allen 633

Yaeger, Fred 602, 1411
Zelenick, Frank 604, 877
Zelenick, Mike 747

Motion to dismiss.....1072

Witnesses for Respondent:
Aigner, Elsie 1260
Aitchison, Robert J. 1169, 1179, 1325, 1332, 1520
Anselm, A. J. 1089, 1212, 1326, 1329, 1348
Atkinson, Mary 1278
Bristol, Lawrence 1319
Brown, James 1268, 1515, 1522
Germer, John 1171
Groll, Albert 1129, 1297
Hook, Chester 1131
Osenek, Frank 1155
Schulz, William E. 1338
Simonson, Alf 1176
Sladek, Arthur 1146
Sladek, Milton 1140
Valenta, Frank 1122
Zersen, Edward 1112

EXHIBITS OFFERED IN EVIDENCE BY NATIONAL LABOR RELATIONS BOARD.

	Offered in evidence at page	Reproduced at page
No. 1-A—Complaint	103	24
Amended Charge	103	32
Rules and Regulations of National Labor Relations Board, and acknowledgment of service by the respondent.....	103	35
No. 1-B—The registered return reciting the service of the complaint upon the union.....	103	63

	Offered in evidence at page	Reproduced at page
No. 1-C—Motion of Respondent for extension of time to file answer, and to continue the cause.	103	63
No. 1-D—Affidavit of Max Swiren in support of motion for extension of time, etc.	103	66
No. 1-E—Order of Regional Director denying motion	103	68
No. 1-F—Answer of Respondent	103	69
No. 1-G—Application by Respondent for subpoenas and subpoenas duces tecum	103	83
No. 1-H—Order designating the Trial Examiner	103	86
No. 1-I—Original charge filed September 15, 1936	108	23
No. 1-J—Table No. 1 entitled "Rank of Chemicals Industry in United States"—prepared by Division of Economic Research of the Board	307	1562
No. 1-K—Table No. 2 entitled "Rank of Chemicals Industry in Illinois"—prepared by Division of Economic Research of the Board	307	1562
No. 1-L—Table No. 3 entitled "The Chemicals Industry: Rank of Illinois"	307	1563
No. 1-M—Table No. 4 entitled "Sources of the Ores of Rare Metals"	307	1563
No. 1-N—Table No. 5 entitled "The Flow of the Products of the Chemicals Industry"	307	1564
No. 1-O—Order of the Board denying the application for subpoenas and subpoenas duces tecum	866	88
No. 1-P—Renewal of application of Fansteel Metallurgical Corporation	1482	89
No. 1-Q—Amendment to Answer of Respondent	1521	79
No. 1-R—Telegram sent by Examiner Dudley to National Labor Relations Board in Washington on June 23, 1937	1550	1565

	Offered in evidence at page	Reproduced at page
No. 1-S—Airmail letter dated June 23, 1937, to National Labor Relations Board at Washington sent by Examiner Dudley transmitting to the Board the original written renewal of the respondent's application for subpoenas	1550	1565
No. 1-T—Telegram to Examiner Dudley from Board in Washington, received June 24, 1937	1550	1567
No. 1-U—Telegram sent to Board at Washington by Examiner Dudley, dated June 25, 1937	1561	1567
No. 1-V—Subpoena duces tecum to Carl A. Swanson	1561	91
No. 1-W—Subpoena to Robert Pilkington	1561	92
No. 2—Form 10-K of the United States Securities and Exchange Commission filed with the Commission April 27, 1936; also part of Form 10-K of the Securities and Exchange Commission filed with the Commission April 26, 1937	121	1568
No. 3—Excerpt from Form 10 of the Securities and Exchange Commission filed with the Comsion on December 24, 1935	121	1576
No. 4—Copy of Standard Corporation Records, pages 1019 and 1020, purporting to be statistics of Fansteel Metallurgical Corporation, as compiled and published by Standard Statistics	121	1581
No. 5—Stipulation concerning interstate commerce and fact of no discharge for union activities prior to sit-down	125	1592
No. 6—Complaint in a certain cause in the Circuit Court of Lake County entitled "Fansteel Metallurgical Corporation, plaintiff, v. National Labor Relations Board, et al., No. 37939"	130	1594

FRANK LATZ, recalled as a witness for the National Labor Relation Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You have already been sworn, have you not, Mr. Latz?
A. What?
Q. You have already been sworn?
A. Yes.
Q. How long have you been employed by Fansteel?
A. About 18 years.
Q. What was your job?
A. Tungsten acid production.
Q. Tungsten acid production?
A. Yes.
Q. Is that in the chemical department?
A. The chemical department.
Q. When did you join the union?
A. About the 1st of July, 1936.
Q. Did the plant operate between February 17th and February 26th?
1346 A. It did not.
Q. When did you draw your last pay there?
A. About the 1st of March.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about coming back to work?
A. No.
Q. Have you been offered re-employment?
A. No.
Q. How much did you get per hour?
A. 68 cents.
Q. How many hours a week did you work?
A. 40.
Q. What was your weekly pay?
A. Oh, about $28.
Q. How much have you earned since February 26th?
A. About $80.
Q. What did you do to earn it?
A. Painting.
Mr. Swiren: What was that amount?

Mr. Walsh: $80, for painting.

Q. (By Mr. Walsh.) You were one of the men who occupied the buildings between February 17th and February 26th?

A. I was.

Q. You were one of the respondents in the contempt
1357 case, and one of the defendants in the injunction case?

A. I was.

Q. When work stopped on February 17th, did the management ask you to stop work?

A. No.

Q. The stoppage was caused by the men taking over the buildings, is that right?

A. Right.

Q. You have never been offered re-employment by the company?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) Did you ever apply for re-employment or reinstatement?

A. No.

Q. If after you and your associates had been evicted from buildings 3 and 5 by the sheriff, the company had offered to re-employ you without any conditions, would you have accepted that offer and gone back to work?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Is Elbert Peters here?

1348 (No response.)

Mr. Walsh: Joseph Richveis.

JOSEPH RICHVEIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins) Your name is Joseph Richveis?
A. Yes.
Q. Spell the last name, please.
A. R-i-c-h-v-e-i-s.
Q. Were you subpoenaed to appear before the Examiner here, Mr. Richveis?
A. Yes.
Mr. Collins: I would like to claim the privilege of the witness, Mr. Examiner, under Section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted to the witness.
Q. (By Mr. Walsh) What is your address?
A. 2249 Hervey Avenue.
Q. How long were you employed by Fansteel?
A. 9 years.
Q. What was your job?
A. Wire drawing.
Q. You were in the wire department?
1349 A. Yes.
Q. Did the plant operate between February 17th and February 26th?
A. No, sir.
Q. When did you draw your last pay?
A. It must have been in between March 5th, and about the 8th. I can't recall exactly which day it was.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did you talk to anybody about coming back to work there?
A. No, I didn't
Q. Did anybody ever offer you re-employment?
A. No, sir.
Q. What was your hourly rate of pay?
A. 60 cents an hour.
Q. How many hours a week did you work?
A. How many hours?
Q. Yes.

A. 40 hours.
Q. What would your weekly pay check amount to?
A. $24.
Q. How much have your earned since February 26th?
A. I have worked three days for the city, but I didn't get paid yet, so I don't know. I don't know what you would call that.
1350 Q. Well, tell us about it. Why have you not been paid?
A. I don't know. I don't know when their pay day is. I don't know if I have got anything coming or not.
Q. If you had been paid, how much would it have amounted to?
A. I heard rumors that they paid $4.80 a day, but I don't know whether I would get $4.80 a day or not.
Q. That would be $14.40, would it not?
A. I think it would be something like that.
Q. So if you collect it, you will have earned it, is that right?
A. Yes.
Q. Normally when you are employed at Fansteel, do you work outside for pay?
A. No, sir.
Q. You were one of the men in the buildings between February 17th and February 26th, were you not?
A. I was.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. I was.
Q. When the work stopped on February 17th, did the management tell you to stop work?
A. They did not.
Q. The stoppage was caused by the men taking over the buildings?
1351 A. Yes.
Q. Isn't that right?
A. Yes.
Q. You have not been offered re-employment at any time since you left, have you?
A. No.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren) Did you ever apply for reinstatement or re-employment?

A. No, sir.

Q. You knew the plant had resumed operations, did you not?

A. I did.

Q. You did not come back there?

A. Sir?

Q. You did not come back?

A. No.

Q. If after you and your associates had been evicted from buildings 3 and 5 by the sheriff the company had offered to reemploy you without any conditions, would you have accepted that offer and gone back to work?

A. Yes, if the rest of the boys would have went back, I would have went back too.

Q. Otherwise you would not?

A. No, sir.

1352 Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Fred Yaeger.

FRED YAEGER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins) Your name is Fred Yaeger?

A. Yes.

Q. How do you spell the last name?

A. Y-a-e-g-e-r.

Q. Were you served with a subpoena to appear here before the Examiner today

A. Yes.

Mr. Collins: I would like to claim the witness' privilege, Mr. Examiner, under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) What is your address?

A. 407 South Jackson Street, Waukegan.
Q. How long were you employed at Fansteel?
A. 14 years.
Q. What is your job?
A. Maintenance steamfitter.
1353 Q. When did you join the union?
A. About the first part of July.
Q. 1936?
A. Yes?
Q. Did the plant operate between the 17th and the 26th of February?
A. No, sir.
Q. When did you draw your last pay?
A. Oh, sometime along the first part of March.
Q. Did you go back to the plant to get your check?
A. Yes, sir.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did anybody talk to you about going back to work?
A. No.
Q. Have you been offered re-employment?
A. I haven't.
Q. What was your hourly rate of pay?
A. 80 cents an hour.
Q. How many hours a week did you work?
A. I was working around 40 to 60 hours a week. It all depended on breakdowns, and stuff like that.
Q. Emergency matters would come up?
A. I always averaged 40 to 50 hours a week.
Q. What was your weekly pay usually? What would
1354 it usually run?
A. Around $40 a week.
Q. How much have you earned since February 26th?
A. About $50.
Q. What did you do to earn that?
A. I did some gardening work.
Q. Normally when you are working at Fansteel, do you do any work on the outside for pay?
A. I do not.
Q. Are you one of the men who occupied the buildings between February 17th and February 26th?
A. I am.
Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. Right.

Q. When the work stopped on the 17th of February, the management did not ask you to stop work, did they?

A. No.

Q. The stoppage was caused by the men taking over the buildings, is that right?

A. Right.

Q. How much did you say you got? What was your hourly rate?

A. 80 cents.

Mr. Walsh: That is all.

Cross-Examination.

1355 Q. (By Mr. Swiren) What kind of work did you do at Fansteel?

A. Maintenance steamfitter.

Q. You were a steamfitter?

A. Yes.

Q. In the maintenance department?

A. Right.

Q. Did you ever apply for re-employment or reinstatement?

A. No, I did not.

Q. If after the sheriff evicted you and your associates from buildings 3 and 5 the company had offered to re-employ you without any condition whatever, would you have returned to work?

A. No, sir.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Frank Zelenick.

FRANK ZELENICK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins) Your name is Frank Zelenick?

A. Yes.

Q. Spell your last name.

1356 A. Z-e-l-e-n-i-c-k.

Q. Were you subpoenaed to appear here before the Examiner?

A. I was.

Mr. Collins: Mr. Examiner, I would like to claim his constitutional privilege under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) How long were you employed by Fansteel?

A. 29 months.

Q. You did not give us your address. What is it?

A. 1022 Wadsworth.

Q. What is your job?

A. Annealer in the wire department.

Trial Examiner Dudley: What was that?

Mr. Walsh: Annealer in the wire department.

The Witness: Annealer in the wire department.

Q. (By Mr. Walsh) When did you join the union?

A. July 1936.

Q. Talk up a little louder.

A. All right.

Mr. Swiren: Keep your voice up, please. I cannot hear you back here.

Q. (By Mr. Walsh) When did you join the union?

A. In July 1936.

Q. Did the plant operate between the 17th and 26th

1357 of February?

A. No.

Q. When did you draw your last pay?

A. Oh, about March 7th.

Q. Did the company take up your pass at that time?

A. No. I didn't have it with me. They asked for it.

Q. They asked for it to be turned in, didn't they?

A. Yes.

Q. Did you talk to anybody about coming back to work?

A. We sent a committee over to represent us.

Q. But you yourself never talked with anybody?

A. No.

Q. Were you personally asked to come back to work by anybody?

A. No, I wasn't.

Q. What was your hourly rate of pay?

A. 58 cents an hour.

Q. How many hours a week did you work?

A. 40.

Q. What did your weekly pay amount to?

A. $23.20.
Q. How much have you earned since February 26th?
A. Nothing.
Q. You are one of the employees—one of the men who occupied the buildings between February 17th and
1358 February the 26th?
A. Yes.
Q. You are one of the respondents in the contempt case—
A. Yes.
Q. —and one of the defendants in the injunction case, are you not?
A. Yes.
Mr. Swiren: What was the answer to that question? I did not hear it.
The Witness: I am.
Q. (By Mr. Walsh) When work stopped on the 17th of February the management did not ask you to stop work, did they?
A. No.
Q. The stoppage was caused by the men taking over the buildings, is that correct?
A. It was a protest, not taking them over; just occupying them.
Q. You are occupied the buildings, is that right?
A. Yes.
Q. You have never been offered reinstatement?
A. No, I haven't.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren) You say the men did not take over the buildings, they just protested?
1359 A. They just occupied the buildings and protested.
Q. They just occupied them?
A. Yes.
Q. And they permitted work to go on in those buildings in the normal way, I take it?
A. No, they did not.
Q. They did not let the sheriff or the company officials come in, did they?
A. They didn't stop them.
Q. They did not do anything to stop them?
A. No.

Q. They did not lock or barricade the doors?
A. I didn't.
Q. None of the men did, did they?
A. I don't know.
Q. You do not know anything about it?
A. No.
Q. Do you know you are under oath?
A. Sure.
Q. Do you mean to sit there and tell the Examiner, and tell everyone here in this courtroom that you do not know anything about it?
A. No.
Q. You do not know anything about the men keeping anybody from coming into the building, is that right?
1360 A. They didn't keep anybody from coming in the building.
Q. What building were you in?
A. Building 5.
Q. No doors were barricaded there? They were not locked?
A. I didn't say they weren't barricaded.
Q. Were they?
A. Maybe.
Q. Tell us whether they were or not?
A. I suppose so.
Q. Tell us "Yes" or "No."
A. I suppose so.
Q. Is that the best answer you can give?
A. Yes.
Q. You want to tell the whole story, I take it. You are not trying to hold anything back?
A. No.
Q. You do not know whether you tried to keep the company officials or the sheriff from coming in to those buildings, do you?
A. I don't think they tried to keep the company officials out.
Q. They did not do a thing about it?
A. No.
Q. Did you ever see the sheriff in there from February 17th to February 26th?
1361 A. I didn't see the sheriff at all.
Q. Did you see his deputies coming in the building?
A. I didn't see his deputies coming in the building.

Mr. Swiren: How much was that?
Mr. Walsh: I beg your pardon?
Mr. Swiren: How much did he earn? How much was that?
The Witness: $5.00.
Mr. Walsh: $5.00.
Mr. Swiren: All right.
Q. (By Mr. Walsh) How did you earn that?
A. I got that for political work.
Q. Political work?
A. Yes.
Q. All right. You are one of the men who occupied the plant between February 17th and 26th, are you not?
1339 A. Yes.
Q. Were you one of the respondents in the contempt case and one of the defendants in the injunction case?
A. Yes.
Q. Is that right?
A. Yes.
Q. When the work stopped on February 17th, the management did not ask you to stop work, did they?
A. No.
Q. The stoppage was caused by the men—by a—
A. By a strike.
Q. —by the men taking over the buildings?
A. Yes.
Q. You have never been offered re-employment, have you?
A. No.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) Have you ever applied for reinstatemen or re-employment?
A. No.
Q. If after you and your associates had been evicted from buildings 3 and 5, the company had offered to reinstate you without any conditions, would you have accepted that offer?
A. Not until all the strikers are back.
1340 Q. Not unless all of them are back?
A. Yes.
Q. You would insist on that, even though the jobs of some 40 of them may have been abolished, is that right?
A. Repeat that question.

Mr. Swiren: Read the question.
(The question was read.)
A. Well, to my knowledge, I would.
Q. (By Mr. Swiren) You would still refuse to go back, is that right?
A. Well, that means that these people that are on strike now, if they are reinstated, I am willing to go back.
Q. You mean, everybody?
A. And if they recognize the Amalgamated Iron, Steel and Tin Workers.
Q. I am talking about your employment now. I am talking about the time when you and the others were evicted from the plant.
What would you say the fact is with respect to what you would have done then?
A. I don't understand you.
Q. I will start over again. You said you would not go back to work after you and the others were put out of buildings 3 and 5 unless all of the men that were in those buildings with you were put back to work?
1341 A. Correct.
Q. Is that right?
A. Yes.
Q. Is your answer the same, even though the jobs of 40 of them had been abolished?
A. It would be the same, yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: Herman Latz.

HERMAN LATZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins) Your name is Herman Latz?
A. Yes.
Q. How do you spell your last name?
A. L-a-t-z.
Q. Were you served with a subpoena to appear here before the Examiner?
A. I was.

Mr. Collins: I would like to claim the witness' privilege under Section 11, paragraph 3, of the National Labor Relations Act, if the Examiner please.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) What is your address?

1342 A. 813 Broadway, North Chicago.

Mr. Swiren: Keep your voice up, please, so I can hear you.

Q. (By Mr. Walsh) How long were you employed by Fansteel Company?

A. 14 years.

Q. What is your job?

A. I worked at the sintering department.

Q. Doing what?

A. Sintering tantalum.

Q. When did you join the union?

A. November 4th?

Q. 1936?

A. 1936.

Q. Did the plant operate between February 17th and February 26th?

A. February 17th?

Q. Yes.

A. No.

Q. When did you draw your last pay from the company?

A. It was between March 5th and 8th.

Q. Did the company take up your pass at that time?

A. No. They asked me for the pass, but I told them I lost it.

Q. Did you talk to anybody about coming back to work?

1343 A. No, I did not.

Q. Have you been offered re-employment at the plant?

A. No, sir.

Q. What was your hourly rate of pay?

A. 68 cents an hour.

Q. Did you work 40 hours a week?

A. I was working more, just before the strike. I was working six days a week.

Q. What was your average weekly pay just prior to the strike?

A. About $35.00 a week.

Q. How much have you earned since February 26th?

A. About $19.

Q. What did you do to earn that?
A. I washed walls.
Q. Normally while you are employed at the plant do you do any work on the outside for pay?
A. No, sir.
Q. You were one of the men in the buildings between the 17th of February and the 26th of February?
A. I was.
Q. And you were one of the respondents in the contempt case, and one of the defendants in the injunction case, is that correct?
A. I was.
Q. When the work stopped on the 17th of February,
1344 did the management ask you to stop work?
A. No, sir.
Q. The stoppage was caused by the strike, is that right?
A. By the strike, yes.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren) By "the strike" you mean the seizure and retention by you and the others of buildings 3 and 5, do you not?
Mr. Walsh: I mean, the stoppage was caused by the men taking over the buildings, was it not?
The Witness: Yes.
Mr. Walsh: I am sorry. That is the way I meant to put it.
Mr. Swiren: All right.
Mr. Walsh: Excuse me.
Q. (By Mr. Swiren) Did you ever apply for reinstatement or re-employment?
A. No, sir.
Q. If after you and your associates were evicted from buildings 3 and 5 by the sheriff, the company had offered to re-employ you without any condition, would you have accepted that offer and gone back to work?
A. No.
Mr. Swiren: That is all.
1345 Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: I will recall Frank Latz.

Q. In the maintenance department?
A. Yes, sir.
Q. When did you join the union?
A. In July 1936.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. No, sir.
Q. When did you draw your last pay?
A. Some time in March.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did they—who gave you your last check?
A. George Schardt.
Q. Did you talk to anybody about going back to work?
A. I did not.
Q. Have you been offered re-employment?
A. No, sir.
1369 Q. What was your hourly rate of pay?
A. 92 cents an hour.
Q. How many hours a week did you work?
A. 40 hours a week and overtime.
Q. What did your weekly pay amount to just prior to the strike?
A. It averaged about $46 a week.
Q. How much have you earned since February 26th, 1937?
A. Nothing.
Q. You were one of the men who occupied the buildings between February 17th and February 26th, 1937?
A. I was.
Q. You were one of the respondents in the contempt case and one of the defendants in the injunction case?
A. I was.
Q. When work stopped on the 17th of February, the management did not ask that the work be stopped, did they?
A. No, sir. It was a strike.
Q. The stoppage was caused by the men taking over the buildings, is that right?
A. Yes.
Q. You have not been offered reinstatement since that time?
A. I have not.
Mr. Walsh: That is all.
Mr. Swiren: Just a minute.

1370 *Cross-Examination.*

Q. (By Mr. Swiren) Have you applied for re-employment or reinstatement, Mr. Warner?

A. Personally, no.

Q. If after you and your associates had been evicted by the sheriff from the Buildings 3 and 5, and the company had offered reinstatement or re-employment to you without naming any conditions, would you have accepted that offer and returned to work?

A. No, sir, not unless the company recognized the union, and agreed to bargain with them collectively.

Q. By "them," you mean also they would have to take back all of the men who took over buildings 3 and 5, is that right?

A. Without discrimination, yes, sir.

Q. Is your answer to my question "Yes"?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Joe Aigner.

JOE AIGNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

1371 Mr. Collins: Will you state your name please?

The Witness: My name?

Mr. Collins: Yes. State your name please.

The Witness: Joe Aigner.

Mr. Collins: How do you spell your last name?

The Witness: A-i-g-n-e-r.

Mr. Collins: You were served with a subpoena, were you, this morning, or yesterday?

The Witness: Yes.

Mr. Collins: I would like to claim the witness' privilege, under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The witness is granted his privilege.

Q. (By Mr. Walsh) Where do you live, Mr. Aigner?
A. 219 South Park Avenue.
Q. Waukegan?
A. Yes.
Q. How long were you employed by Fansteel?
A. 11 years.
Q. What is your job?
A. Janitor.
Q. Janitor?
A. Yes.
Q. When did you join the union?
1372 A. August 5, 1936.
Q. When did you get your last pay?
A. March 7, 1937.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Who gave you your check?
A. The girl in the office.
Q. Did you talk to anybody about going back to work?
A. No.
Q. Did anybody ask you to come back to work?
A. I asked one fellow if he would give me an application blank, and he gave it to me.
Q. He gave you an application blank?
A. Yes. I didn't hear nothing about it.
Q. You did not hear anything any more?
A. No.
Q. How much did you get an hour when you worked down there?
A. 49 cents.
Q. How many hours a week did you work?
A. 40 hours.
Q. How much was your weekly pay? What did your weekly pay amount to?
A. $19.60.
Q. How much have you earned since February 26th?
A. Not a cent.
1373 Q. Are you one of the men who was in the buildings?
A. Yes.
Q. You were one of the respondents in the contempt case?
A. No.
Q. You were not?
A. No.
Q. Do you know whether you were one of the defendants in the injunction case?

A. No.

Mr. Keele: He was not a defendant. I do not know whether he was a respondent or not.

Q. (By Mr. Walsh) You mean, you have not been sued yet?

A. No. Nobody has said nothing to me.

Mr. Keele: I do not think he was a respondent. I do not know.

Q. (By Mr. Walsh) When work stopped on February 17th, the management did not ask that the work be stopped, did they?

A. No, I didn't hear nothing.

Q. The stoppage was caused by the men taking over the buildings, wasn't it?

A. I don't know. I didn't hear anything. I was at the other end.

Q. You were in the other end of the buildings?

A. I was in the other end.

Q. All right.

1374 A. Nobody bothered me.

Q. Nobody bothered you?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) What building were you in?

A. No. 3.

Q. You were there on the 17th of February, were you not?

A. Yes.

Q. And on the 18th?

A. Yes.

Q. And on the 19th?

A. Yes.

Q. And right on through until the 26th?

A. I was there until the last, you bet.

Q. You were there until the morning of the 26th?

A. Yes.

Q. You went into those buildings at the same time the other men who were in there during that period went in to them, on the afternoon of the 17th of February?

A. The 17th, I was in there.

Q. You went in there at the same time the other men went in there and took over those buildings?

A. Yes.
Q. You stayed there until they left?
1375 A. Yes.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: I wonder if we may have a short recess at this time?
Trial Examiner Dudley: I will declare a recess.
(A short recess was taken.)
Trial Examiner Dudley: I will call the hearing to order, again. You may proceed.
Mr. Walsh: I will recall Paul Wells.

PAUL WELLS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified as follows:

Direct Examination.

Mr. Walsh: This witness has testified before, your Honor.
Trial Examiner Dudley: Were you on the stand before?
The Witness: Yes.
Mr. Walsh: This is Paul Wells.
Trial Examiner Dudley: Proceed.
Q. (By Mr. Walsh) How long were you an employee at Fansteel?
A. About 10 months.
1376 Q. What was your job?
A. Apprentice, in the tool room.
Q. When did you join the union?
A. In July 1936.
Q. Did the plant operate between the 17th and the 26th of February 1937?
A. No, sir.
Q. When did you draw your last pay?
A. On the 5th of March, or just after that.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you go to the plant to receive your check?
A. I did.
Q. Did you talk to anybody there about going back to work?

A. No, sir.
Q. Have you been offered reinstatement since that time?
A. Well, just one night, when—
Q. I believe you testified the other day concerning that incident, did you not?
A. Yes.
Q. What was your hourly rate of pay?
A. 52 cents.
Q. How many hours a week did you work?
A. 40.
Q. What was your average pay check every week?
1377 A. It came to $20.80.
Mr. Swiren: What was that amount?
Mr. Walsh: $20.80.
Mr. Swiren: All right.
Q. (By Mr. Walsh) How much have you earned since February 26th?
A. $10.25.
Q. What did you do to earn that money?
A. I worked down at Onwentsia Country Club.
Q. Normally when you are employed at Fansteel, do you work outside?
A. No, sir.
Q. You are one of the men who occupied the buildings between the 17th and 26th of February?
A. I am.
Q. You were one of the defendants in the injunction suit—
A. Yes.
Q. —and one of the respondents in the contempt proceeding?
A. Yes.
Q. When the work stopped on the 17th of February, the management did not ask you to stop work, did they?
A. No, sir, they didn't.
Q. The stoppage was caused by the men taking over the buildings, is that right?
A. Yes, sir.
1378 Q. Since February 26th you have never been offered reinstatement other than with reference to this incident concerning which you testified the other day, is that right?
A. That is right.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) Were you in either building 3 or building 5 during the entire period from February 17th to 26th?

A. Yes, sir.

Q. You never have made application for reinstatement, have you?

A. No, sir, I never did.

Q. What was this statement you made about this incident which you say you testified about with reference to being asked to return to work? Will you tell us about that?

A. One of the boys from the poolroom came down to see me one night. He asked me if I wanted to go back to work or not. He says "Do you want to work or not?" I told him "No, not until the rest of them go back."

Q. That was Chester Hook, was it not?

A. Yes.

Q. He is an apprentice in the tool room?

A. He is.

Mr. Keele: That is all.

Mr. Walsh: That is all.

1379 Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: I will call Edward Schuman.

EDWARD SCHUMAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Edward Schuman?

The Witness: Edward Schuman.

Mr. Collins: Spell the last name for the reporter.

The Witness: S-c-h-u-m-a-n.

Mr. Collins: Were you served with a subpoena, Mr. Schuman?

The Witness: A what?

Mr. Collins: Were you served with a subpoena?

The Witness: I don't know just what you mean.

Q. (By Mr. Walsh) Did you get a subpoena?

A. No, I didn't.

Q. You have never had a subpoena?
A. Not that I know of.
Mr. Keele: Let the record show he did get one.
Mr. Walsh: I think he got one.
Mr. Collins: He received one, but he does not know what it is.
Mr. Keele: Let the record show he received one.
1380 Mr. Collins: Let the record show that the witness was subpoenaed, and that I claim his privilege, if the Examiner please, under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh) What is your address?
A. 323 McKinley Avenue.
Q. How long were you employed at Fansteel?
A. Between 7 and 8 years.
Q. What is your job?
A. Contact point cutter.
Q. When did you join the union?
A. Last July.
Q. Did the plant operate between the 17th of February and the 26th of February?
A. No, sir.
Q. When did you draw your last pay?
A. Between the 1st and 5th of March.
Q. Did the company take up your pass at that time?
A. They did.
Mr. Swerin: Speak up a little louder, please.
Mr. Walsh: You will have to keep your voice up so Mr. Swiren can hear you back there.
Q. (By Mr. Walsh) Did your company take up your
1381 pass at that time?
A. They did.
Q. Did you go down to the plant to get your pay?
A. Yes, sir.
Q. Did you talk to anybody there about going back to work?
A. At the time they took up my pass, Bill Schultz asked me—
Q. Speak up a little.
Mr. Swiren: Wait a minute. I cannot hear a word the witness is saying back here.
Mr. Walsh: Keep your voice up.

The Witness: At the time they took up my pass, Bill Schultz asked me if I would like to sign a reinstatement card.

Q. (By Mr. Walsh) Did you sign a reinstatement card?

A. No, sir.

Q. Have you had any offers of re-employment since that time?

A. No, sir.

Q. How much was your hourly rate of pay?

Mr. Swiren: That is objected to on the ground this witness was asked to return to work.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh) What was it?

A. I worked mostly piece work but we had an hourly rate of 55 cents.

Q. How much did you earn working on piece work?

A. Between $30 and $35 a week.

1382 Q. That was your weekly pay, between $30 and $35 a week?

A. Yes.

Q. That was paid on a piece work basis?

A. Piece work basis.

Q. How much have you earned since February 26th?

A. $35.

Q. What did you do to earn that?

A. Painting.

Q. Normally when you are working at the plant, do you do any work on the outside?

A. None.

Q. Were you one of the men in the buildings?

A. Yes.

Q. You were there from the 17th to the 26th of February?

A. Yes.

Q. You were one of the respondents in the contempt case?

A. Just what do you mean?

Q. Well, were you in this trial last week?

A. Yes, I was in the trial.

Q. You were one of the defendants in the injunction case?

A. Yes.

Q. When work stopped on the 17th of February did the management ask that the work be stopped?

A. No.

Q. The stoppage was caused by the men taking over

1383 the buildings?

A. Yes.

Q. Is that right?
A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) Did I understand you to say that you were asked to come back to work?
A. Yes.
Q. Who asked you?
A. Bill Schultz.
Q. You refused to come back?
A. Yes.
Q. You were in Building 3 from February 17th to February 26th, inclusive, were you not?
A. Yes.
Q. You were in there all the time that the other men were keeping those buildings?
A. Yes.
Mr. Keele: That is all.
Mr. Walsh: Mr. Examiner, this witness is engaged in working now. If the respondent needs him later, we will produce him. If I may I would like to ask that he be excused from further attendance at this time.
Mr. Keele: That is all right.
1384 Trial Examiner Dudley: Very well. You may be excused.
Mr. Walsh: Just a moment. I would like to ask one or two questions more.
Trial Examiner Dudley: Very well.

Redirect Examination.

Q. (By Mr. Walsh) How much money did you earn since February 26th?
A. Since February 26th?
Q. Yes.
A. $35.
Q. You earned that by painting, I believe you said?
A. Yes.
Q. You are working now, painting?
A. Yes.
Q. Is that a permanent employment?

Q. Did you see gas coming in?
A. No.
Q. You did not see any gas coming in?
A. I felt it. I didn't see it.
Q. You felt it. You knew there was gas coming in, did you not?
A. Yes.
Q. Could you tell the difference between gas and the ordinary air?
A. It was smoke.
Q. Oh; you did see it?
A. Well, I suppose so.
Q. Let us be honest now, and tell the whole story.
A. I suppose smoke is gas.
Mr. Walsh: I think the question was "Did you see gas coming in?"
Mr. Swiren: He saw gas coming in. He just said so.
The Witness: I didn't see it coming in. I seen it after it was in.
Mr. Walsh: I think he answered the question correctly.
Q. (By Mr. Swiren) Did you get out, yourself?
A. When was that?
1362 Q. When the gas started coming in?
A. Not on the 19th, no.
Q. No. Did you think the sheriff and the company were trying to get possession of the building again?
A. I suppose they were.
Q. They did not get in, then, did they?
A. No.
Q. Were the doors open then?
A. I don't think they were at the time.
Q. After the sheriff started to put gas into building 3 on the 26th, you and the other men came out of building 5, is that right?
A. Yes.
Q. Up to that time you stayed in?
A. Sure.
Q. You did not care whether the company or the sheriff came in building 5 during that entire period?
A. I didn't care if they came in.
Q. You did not care if they sent you home?
Trial Examiner Dudley: I think that question is subject to the point I raised a while ago.
Mr. Swiren: The witness raised the point on direct exam-

ination, when he said there was a protest. I want to find out what that protest was.

Trial Examiner Dudley: Have you anything else?

1363 Q. (By Mr. Swiren) Did you ask to come back to work? Did you apply for reinstatement?

A. We sent our committee up there—

Q. Did you personally apply?

A. Did I personally apply?

Mr. Swiren: I ask for a direct answer, Mr. Examiner.

Q. (By Trial Examiner Dudley) Did you talk with any of the officials of the company personally?

A. No, I didn't speak with any of the officials.

Trial Examiner Dudley: He says "No."

Q. (By Mr. Swiren) If at the time the sheriff evicted you and your associates from buildings 3 and 5, the company had offered you re-employment, do I understand that you would have accepted that offer and gone back to work?

A. If they would have recognized the union.

Q. And taken back all the men who had sat down in the plant with you, is that right?

A. Yes.

Q. Otherwise you would not have gone back?

A. No.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: I will recall Carl Swanson.

1364 CARL SWANSON, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Mr. Walsh: This witness has previously testified, your Honor.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh) I believe you testified you had been employed by the Fansteel Company for 17 years?

A. Since 1920.

Q. Since 1920?

A. Yes, off and on.

1365 Q. You are in the maintenance department, and your job is that of a millwright, is that right?

A. Millwright, yes.

Q. Was that your last job?

A. I was kind of an assistant foreman towards the end. That is the title they gave me.

Mr. Swiren: I am afraid I cannot hear you. Tell me that again, so I can understand you.

Mr. Walsh: Read the answer, please.

(The answer was read.)

Q. (By Mr. Walsh) When did you join Lodge 66?

A. July 1936.

Q. Did the plant operate between the 17th of February and the 26th of February?

A. No, sir.

Q. When did you draw your last pay?

A. In March some time.

Q. Did the company take up your pass?

A. Yes.

Q. Did you talk to anybody about coming back to work other than the meetings that were had with the management, that you carried on as a representative of the union?

A. No, sir.

Q. Did anybody offer you re-employment?

A. No, sir.

1366 Q. What was your hourly rate of pay?

A. 95 cents an hour.

Q. How many hours a week did you work?

A. Night and day, almost.

Q. What did your weekly pay amount to?

A. Anywhere from $40 to $45 or $50. It all depends on the hours.

Q. Could you give us an average? What was your pay check from the 1st to the 15th of February?

A. I don't remember that.

Q. Do you think it averaged somewhere around $45 or $50 a week?

A. Somewhere around there, yes.

Q. How much have you earned since February 26th?

A. Nothing.

Q. You were one of the men who occupied the buildings between the 17th and the 26th of February?

A. Yes.

Q. You were a respondent in the contempt case and a defendant in the injunction case, were you not?

A. Yes.
Q. When the work stopped on February 17th, the management did not order the work stopped, did they?
A. No.
Q. The stoppage was because the men took over the
1367 buildings, is that right?
A. Yes, sir.
Q. You have never been offered re-employment, is that correct?
A. That is correct; I have not
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren) Did you ever apply for reinstatement or re-employment?
A. No, sir.
Q. If after you and your associates had been evicted from Buildings 3 and 5 by the sheriff, your company offered to re-employ you or reinstate you, without naming any conditions, would you have accepted that offer and gone back to work?
A. No, sir.
Q. What was your answer to that?
A. No, sir.
Q. You say "No, sir"?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: I will recall Charles Warner.

CHARLES T. WARNER, recalled as a witness for the
1368 National Labor Relations Board, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Walsh) How long were you employed by Fansteel, Mr. Warner?
A. Approximately 14 years.
Q. What is your job?
A. Electrician.

A. No.
Q. How much was your hourly rate?
A. 90 cents an hour.
Q. How many hours a week did you work?
A. It was a 40 hour week basis.
Q. What did your weekly pay amount to?
A. $36.
Q. How much have you earned since February 26th?
A. As near as I can figure, $80.41.
Q. What—
Mr. Swiren: What was that amount?
The Witness: $80.41.
Mr. Walsh: $80.41.
Mr. Swiren: All right.
Q. (By Mr. Walsh) What did you do to earn this money?
A. Well, part of it I earned at my trade, and the rest of it I earned working at a nursery out in Libertyville. I also earned part of it painting.
Q. You are one of the men who occupied the buildings between the 17th and the 26th of February?
A. I am.
Q. You were one of the respondents in the contempt case, were you not?
1392 A. Yes.
Q. You were one of the defendants in the injunction case, were you not?
A. Yes.
Q. When work stopped on February 17th the management did not stop the work, did they?
A. No.
Q. The stoppage was caused by the men taking over the buildings, is that right?
A. Yes.
Q. You never have been offered re-employment since that?
A. No.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) Have you ever made application for re-employment, Mr. Ruck?
A. Yes.
Q. You did make application?
A. I did.

Q. Are you working at the present time?
A. No.
Q. Are you not employed?
A. No.
Q. You were in Building 3, were you not?
A. Building 3, yes.
1393 Q. You were there from February 17th at 2:30 in the afternoon until the morning of the 26th, is that correct?
A. Yes.
Q. When did you make your application for re-employment?
A. I think it was somewhere around the end of March. I don't know just when it was. It was toward the end of the month of March.
Q. Did you have any conversation at that time with anyanybody? To whom did you make your application? I will put it that way.
A. Well, Luther Henry took my application.
Q. That application was made you say in the latter part of March?
A. Yes.
Q. The latter part of March?
A. Yes, the latter part of March.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused)
Mr. Walsh: Charles G. Fulkerson.

CHARLES G. FULKERSON, SR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: State your name.
1394 The Witness: Charles Fulkerson.
Mr. Collins: Your name is Charles G. Fulkerson, is it not?
The Witness: Charles G. Fulkerson.
Mr. Collins: Charles G. Fulkerson, Sr.?
The Witness: Yes.
Mr. Collins: Were you served with a subpoena?
The Witness: Yes.
Mr. Collins: I would like to claim the privilege of this wit-

ness under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

Q. (By Mr. Walsh) What is your address, Mr. Fulkerson?
A. 511 Fulton Avenue.
Q. How long were you employed by Fansteel?
A. 22 years.
Q. What is your job?
A. Working in the contact department, the cutting department.
Q. The contact cutting department?
A. Yes.
Q. When did you join the union?
A. The first of July.

Mr. Swiren: You will have to keep your voice up.

1395 Mr. Walsh: Speak up a little louder, so Mr. Swiren can hear you.

The Witness: The 1st of July.
Q. (By Mr. Walsh) 1936?
A. Yes.
Q. The plant did not operate between February 17th and February 26th, did it?
A. No, sir.
Q. Did you—when did you receive your last pay?
A. Some time in March.
Q. Did the company take up your pass when you got your check?
A. Yes.
Q. Did you talk to anybody about going back to work there?
A. No.
Q. Have you been offered re-employment?
A. No, sir.
Q. What was your hourly rate of pay?
A. The day rate was 55 cents.
Q. Did you sometimes work on a piece rate?
A. Yes; most of the time.
Q. Most of the time on a piece rate?
A. Yes.
Q. How many hours a week did you work?
A. 40 hours a week.

Q. What did your weekly pay amount to?

1396 A. Between $30 and $35.

Q. How much have you earned since February 26th?

A. I haven't earned anything.

Q. Are you one of the men who occupied the buildings between February 17th and February 26th?

A. Yes, sir.

1397 Q. You were one of the respondents in the contempt case—

A. Yes.

Q. —and one of the defendants in the injunction case?

A. Yes.

Q. When the work stopped on February 17th, did the management ask that the work be stopped?

A. No.

Q. The stoppage was caused by the men taking over the buildings, is that correct?

A. Yes.

Q. You have not had any offers of re-employment, have you?

A. No, sir.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren) Did you apply for reinstatement or re-employment, Mr. Fulkerson?

A. No.

Q. If after the sheriff had evicted you and your associates from the buildings on the 26th of February, the company had offered to re-employ you without any conditions would you have accepted the offer and gone back to work?

A. If the company would have bargained with our union, I would have.

Q. Without regard to whether any of the other men went back to work or not?

1398 A. If they bargained collectively, I would have went back to work.

Q. Regardless of whether the other men would have gone back to work or not?

A. I think they would have all gone back.

Q. What is that?

A. I think they all would have gone back, if they would bargain collectively.

Q. Regardless of whether the company rehired all of them, would you go back alone?

A. If they would have bargained collectively, I would have went back.

Q. You do not know whether the company is bargaining collectively now, do you?

A. I don't think so.

Q. Do you know? You are not working at the plant, are you?

A. No.

Q. Did you talk to any company official and say that if the company would bargain collectively you would like to come back to work?

A. No.

Q. You did not say that to anybody?

A. (No answer.)

Q. You did not make your views known to the company?

A. No, sir.

1399 Q. Did you write a letter to that effect, or send a telegram?

A. No, sir.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Andy M. Anderson.

ANDY M. ANDERSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Andy M. Anderson?

The Witness: Yes.

Mr. Collins: Were you served with a subpoena, Mr. Anderson?

The Witness: Yes.

Mr. Collins: If the Examiner please, I would like to claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) Where do you live, Mr. Anderson?

A. 142 McKinley Avenue.

Q. Talk up a little louder, so everybody can hear you.
A. 142 McKinley.
1400 Q. How long were you employed by Fansteel?
A. I couldn't say exactly. I think it is about 16 or 17 years ago since I started working there.
Q. What job do you have down there?
A. Carpenter.
Q. You are in the maintenance department?
A. Yes, sir.
Q. When did you join the union?
A. Sometime last summer. I don't recollect when it was. I couldn't say what month it was. It might have been in July or August or something. I'm not so sure of that.
Q. Did the plant operate between February 17th and February 26th?
A. Of this year?
Q. Yes, 1937.
A. No.
Q. When did you draw your last pay from there?
A. After the 27th; I don't remember what date it was after.
Q. It was after the 27th of February?
A. Yes.
Q. Did the company take up your pass when you drew your pay?
A. Yes.
Q. Did anybody talk to you about going back to work?
A. No.
Q. Has anybody down there offered you re-employment?
1401 A. No.
Q. How much was your rate of pay, your hourly rate of pay?
A. My regular hourly rate of pay—I'm not so positive about that, because since I was there, we were getting different rates.
Q. What were you getting just before the strike?
A. The last two weeks of pay of mine—the last pay was $78, and some cents. I don't recall exactly how many cents it was.
Q. But for the last two weeks—
A. It was a full pay, a forty hour week.
Q. How much have you earned since February 26th?

A. I haven't earned anything.
Q. Are you one of the men who occupied the buildings between the 17th and 26th of February?
A. Yes, I am.
Q. Were you one of the respondents in the contempt case and one of the defendants in the injunction case?
A. Yes, I was there.
Q. When work stopped on the 17th of February, did the management ask that the work stop?
A. Work stopped on the 17th, yes, sir.
Q. I say, did the management ask that the work be stopped?
A. No.
Q. The stoppage was caused by the men taking over
1402 the buildings, was it not?
A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) How old are you, Mr. Anderson?
A. (No answer.)
Mr. Walsh: I think he is a little hard of hearing, Mr. Keele. You will have to speak a little louder.
Q. (By Mr. Keele) How old are you, Mr. Anderson?
A. A little over 70.
Q. What was the amount of your paycheck, did you say, for the last two weeks? What was that pay check?
A. $78 and some cents, if I ain't mistaken.
Q. You received almost $80 for those two weeks?
A. Yes.
Q. And you are over 70?
A. Yes.
Q. You were in the buildings from the 17th to the 26th of February?
A. Yes.
Q. You have not earned anything since, is that right?
A. No.
Q. How long had you worked there?
A. 16 or 17 years; I can't say for certain.
Q. 16 or 17 years?
1403 A. Well, maybe it is more. I don't recollect exactly.
Q. What did you do there?
A. Carpenter work.

Q. Did you work there steadily for the last 16 or 17 years?
A. Not steadily. There was slack times that I didn't do hardly anything. I was called off and on, but the last couple of times I worked steady, pretty steady, especially last year.
Q. Your pay checks ran along about that much usually, almost $40 a week?
A. Not always. Sometimes I didn't get in full time. That is the full time. I got full time then.
Q. On that basis—
A. I don't know what the rate by the hour was.
Q. You do not even know what your rate was?
A. I never asked. That was always,—the foreman, I guess, has charge of that.
Q. You were satisfied with what they gave you?
A. I was satisfied.
Q. You were in there from the 17th of February to the 26th of February?
A. Yes, I was.
Q. You did not make any application for re-employment, did you?
A. No, I didn't.
Q. Why did you not, Mr. Anderson?
1404 A. Because I belong to the same organization as the rest of them did.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Allen White.

ALLEN WHITE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Allen White?
The Witness: Yes.
Mr. Collins: Were you served with a subpoena, Mr. White?
The Witness: Yes.
Mr. Collins: I would like to claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.

A. It is contract work I do for myself, outside and inside both.

Mr. Walsh: I see. That is all.

Trial Examiner Dudley: Is that all, Mr. Keele?

Mr. Keele: That is all.

Trial Examiner Dudley: Let the record show Mr. Schuman is excused from further attendance at this time.

(Witness excused.)

Mr. Walsh: Eugene Hendee.

EUGENE D. HENDEE, called as a witness for the
1385 National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Eugene D. Hendee?

The Witness: Yes.

Mr. Collins: You were served with a subpoena, were you not?

The Witness: Yes.

Mr. Collins: I want to claim the privilege of this witness, Mr. Examiner, under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) What is your address?

A. Mundelein, Illinois.

Q. How long were you employed by Fansteel?

A. Four and a half months.

Q. What is your job?

A. Millwright.

Q. When did you join the union?

A. Either the last of October or the first of November.

Mr. Swiren: Speak a little louder, please.

The Witness: Either the last of October or the first of November.

Q. (By Mr. Walsh) Did the plant operate between the 17th and 26th of February?

1386 A. No.

Q. When did you draw your last pay?

A. On the 5th of March.

Q. Did the company take up your pass at that time?

A. I got, I think, a couple of dollars earlier than that, and they took my pass up then.

Q. Did you talk to anybody about going back to work then?
A. No.
Q. Have you been offered re-employment?
A. No.
Q. What was your hourly rate of pay?
A. 75 cents.
Q. 75 cents per hour?
A. Yes.
Mr. Swiren: What was that?
Trial Examiner Dudley: 75 cents an hour.
The Witness: 75.
Q. (By Mr. Walsh) What job did you have?
A. Millwright.
Q. You were a millwright in the maintenance department?
A. Yes.
Q. How long did you work every week? How many hours per week did you work?
A. Usually between 40 and 60, probably 60 hours.
Q. What was your weekly pay?
1387 A. Between $35 and $40.
Q. How much have you earned since February 26th?
A. I don't know exactly. I have been working for about the last five or six weeks, not counting while the trial was going on.
Q. What were you doing?
A. Carpenter work.
Q. How much were you making doing that?
A. 80 cents an hour.
Q. How many hours a week did you work?
A. 48. It wasn't always 48, because they don't work when it rains.
Q. How much money have you earned at carpenter work, do you know?
A. It is over $100. I don't know exactly. I haven't got the figures.
Q. Will you get those figures, and let me know what they are?
A. Yes.
Q. You are one of the men who occupied the buildings between February 17th and February 26th?
A. Yes, sir.
Q. Were you one of the respondents in the contempt case?
A. Yes.

Q. Were you one of the defendants in the injunction case?

1388 A. Yes.

Q. When work stopped on the 17th, did the management ask you to quit work?

A. No.

Q. The stoppage was caused by the men taking over the buildings?

A. Yes.

Q. You have not been offered re-employment since you left the plant?

A. No.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) Have you ever made application to come back to the company?

A. No.

Q. Mr. Hendee, I did not quite understand about the money you have earned. You say you have earned over $100; do you mean you have earned that, or you have been paid that?

A. I have been paid more than that.

Q. Is there any money owing you at the present time?

A. Just for this week.

Q. That would amount to how much?

A. It is $6.40 a day; two days, up to noon today.

Q. That would be four days at $6.40?

A. Pardon me?

1389 Q. That would be $6.40—that would be four days at $6.40?

A. No. That would be two and a half days at $6.40 a day.

Q. I beg your pardon. That is right.

A. Yes.

Q. Would you have gone to work for the company after February 26th, if you had your job offered to you without any conditions attached?

A. No.

Mr. Keele: That is all.

Q. (By Trial Examiner Dudley) Have you earned over $150 since February 26th?

A. I don't think so.

Q. Have you earned $175?
A. No.
Q. You are sure?
A. I don't think it is or —I don't think it is $150 yet. I can get those figures, because they have them in checks, I believe, or receipts.
Trial Examiner Dudley: All right. Is that all, Mr. Walsh?
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: I will recall Ed Ruck.

ED RUCK, recalled as a witness for the National Labor
1390 Relations Board, being previously duly sworn, further testified as follows:

Direct Examination.

Mr. Walsh: This witness has already testified, your Honor.
Trial Examiner Dudley: Very well.
Mr. Walsh: How long had you been employed by Fansteel?
The Witness: Approximately 19 years and three months.
Q. (By Mr. Walsh) What was your job?
A. Automatic screw machine operator.
Q. Was that in the machine department?
A. The machine shop.
Q. The machine shop.
A. Yes.
Q. When did you join the union?
A. About the middle of July 1936.
Q. The plant did not operate from the 17th until the 26th of February, did it?
A. No.
Q. When did you draw your last pay?
A. It was somewhere around the middle of March. I don't know the exact day.
Q. Did the company take up your pass at that time?
A. They did.
Q. Did you talk to anybody about going back to work?
1391 A. No.
Q. Have you been offered reinstatement?

Mr. Collins: Were you served with a subpoena, Mr. White?
A. 827 Eighth Street.
Q. How long were you employed by Fansteel?
A. 12 years.
Q. What job did you have?
A. Diamond die polishing?
1405 Q. When did you join the union?
A. August, 1936.
Q. Did the plant operate between February 17th and February 26th?
A. No.
Q. When did you draw your last pay?
A. On March 5th.
Q. Did the company take up your pass at that time?
A. No.
Q. They have never taken up your pass?
A. No.
Q. Did you talk to anybody about going back to work there?
A. Not connected with the company.
Q. Did someone working there ask you to come back to work?
A. My brother asked me to go down and talk to some of the officials.
Mr. Swiren: What is that?
Mr. Walsh: His brother—
The Witness: My brother—
Mr. Walsh: —asked him to go down and talk to some of the officials.
The Witness: That is right.
Q. (By Mr. Walsh) What was your hourly rate of pay?
A. 57 cents.
Q. How many hours a week did you work?
1406 A. 40 hours.
Q. How much was your weekly pay?
A. $22.80.
Q. How much have you earned since February 26th, 1937?
A. On one job I collected $14.40. I have been working for my brother. I don't know what I will get on that. He is going to pay me.
Q. What kind of work did you do?
A. Painting.
Q. Are you painting for your brother now?
A. Yes.

Q. And the compensation has not been determined, is that right?

A. No. It is in the family.

Q. Does he furnish the paint?

A. Yes.

Q. When you worked normally at Fansteel you did not work on the outside, did you?

A. No, sir.

Q. You are one of the men who occupied the buildings between February 17th and February 26th?

A. No, sir.

Q. Were you one of the respondents in the contempt case?

A. No, sir.

Q. Or one of the defendants in the injunction case?

1407 A. No, sir.

Q. You were not in the plant during that period?

A. I was there one night, the first night.

Q. The first night?

A. Yes.

Q. What time did you leave the plant?

A. I left there at seven o'clock Thursday morning, on the 18th of February.

Q. When the work stopped on the 17th, the management did not order it to be stopped, did they? The management did not order the plant to be shut down, did they?

A. No.

Q. The stoppage was caused by the men taking over the plant, is that right?

A. Yes.

Mr. Walsh: That is all.

Crosss-Examination.

Q. (By Mr. Keele) You were there jut one day—

A. Yes.

Q. —during the time the buildings were taken over by the men, is that right?

A. Yes.

Q. Did I understand you to say you have no application for re-employment or reinstatement?

A. I have not.

1408 Q. You never asked to return to work?

A. No.

Q. How did you happen to leave the plant on the 18th?
A. Illness.
Q. You were sick?
A. Yes.
Q. But you went in at the same time that the other men went in?
A. Yes.
Q. In which building were you?
A. Building 5.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: John Braski.

JOHN BRASKI, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is John Braski?
The Witness: Yes.
Mr. Collins: Spell the last name for the reporter.
The Witness: B-r-a-s-k-i.
Mr. Collins: Were you served with a subpoena, Mr. Braski?
The Witness: Yes.
1409 Mr. Collins: Mr. Examiner, I would like to claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.
Q. (By Mr. Walsh) What is your address, Mr. Braski?
A. 525 Cummings, Waukegan.
Q. You will have to talk up a little bit.
A. 525 Cummings Avenue, Waukegan.
Q. How long were you employed by Fansteel?
A. 18 years.
Q. What was your job?
A. Carpenter.
Q. In what department?
A. Contact department.
Q. When did you join the union?
A. The last part of July.

Mr. Swiren: What was that?
Mr. Walsh: The last part of July.
Q. (By Mr. Walsh) Did the plant operate between the 17th and 26th of February?
A. No.
Q. When did you draw your last pay?
A. The last part of April.
Mr. Swiren: Please speak up so we can hear you back here.
1410 Mr. Walsh: Keep your voice up, please.
Q. (By Mr. Walsh.) When did you draw your last pay?
A. The last part of April.
Q. Did the company take up your pass then?
A. Yes.
Q. Did you talk to anybody about going back to work?
A. No.
Q. Have you been offered re-employment?
A. Yes.
Q. Who asked you to come back to work?
A. Nobody.
Q. I am afraid you did not understand my other question. I asked you if you had been offered re-employment. Did they offer to take you back to work?
A. (No answer.)
Q Did anybody offer to take you back to work at Fansteel?
A. No.
Q. How much was your hourly rate of pay?
A. 55 cents.
Q. 55 cents an hour?
A. Yes, sir.
Q. How many hours did you work a week?
A. 40 hours.
Q. How much was your weekly paycheck?
A. Well, sometimes I did piecework.
1411 Mr. Swiren: We cannot hear a word the witness is saying.
Mr. Walsh: Sometimes I got piecework, and sometimes I got day work, and when I got day work, I got $22 a week.
Q. (By Mr. Walsh.) How much did you make when you worked piecework?
A. About $26; around $26.

Q. How much have you earned since February 26th?
A. I got piecework that day.
Q. How much have you earned since you came out of the plant?
A. How much?
Q. How much have you earned? Have you earned any money since you have been away from Fansteel?
A. No.
Q. Were you one of the men in the buildings?
A. Yes.
Q. Did you stay there from the 17th until the 26th of February?
A. No. I came out on the 21st, on Sunday afternoon.
Q. You came out on Sunday afternoon, the 21st of February, is that right?
A. Yes.
Q. Were you one of the respondents in the trial here last week?

A. Yes, I guess that is what it was.

1412 Mr. Swiren: I will ask the Examiner to request the witness to talk so we can hear him.

Mr. Walsh: He cannot talk any louder.

Mr. Swiren: It is just impossible to try this case, when we are unable to hear what the witnesses are saying.

Mr. Walsh: Suppose you come up here and join us, Mr. Swiren.

Mr. Swiren: I will ask the Examiner to instruct the witness to speak up. I am sure he can do it.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. Yes.
Q. When the work stopped on the 17th of February, did the management ask that the work be stopped?
A. No.
Q. The stoppage was caused by the men taking over the buildings, isn't that right?
A. Yes.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Braski, you say you left the buildings on Sunday, the 21st of February?
A. Yes.
1413 Q. Why did you leave?
A. I didn't feel good.
Q. You were sick?
A. Yes.
Q. You went into the buildings at the same time the other men went in?
A. Yes.
Q. On February 17th?
A. Yes.
Q. Which building were you in?
A. No. 3.
Q. Did you make application for re-employment?
A. No.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Oscar Johnson.

OSCAR JOHNSON, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Oscar Johnson?
The Witness: Yes.
Mr. Collins: Were you served with a subpoena to
1414 appear here before the Examiner today?
The Witness: Yes.
Mr. Collins: I would like to claim the witness' privilege under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.
Q. (By Mr. Walsh.) What is your address, Mr. Johnson?
A. 221 May Street.
Q. Talk up so Mr. Swiren can hear you.
A. 221 May Street.

Mr. Swiren: Let us not have this a secret between you and the witness, Mr. Walsh.

Mr. Walsh: We have no secrets.

Q. (By Mr. Walsh.) How long were you employed by Fansteel?

A. About 18 years.

Q. What was your job?

A. Carpenter.

Q. In the maintenance department?

A. Yes.

Q. When did you join the union?

A. I think it was in July 1936.

Q. When did you draw your last pay from the company?

A. In March. I can't remember the date.

Q. Did the company take up your pass at that time?

A. Yes.

1415 Q. Did anybody talk to you about coming back to work?

A. No.

Q. Did they ever offer you re-employment down there?

A. No.

Q. What was your hourly rate of pay?

A. 76 cents an hour.

Q. How many hours a week did you work?

A. It was different. Sometimes I worked 40, and sometimes 48. Some weeks it would be 48, and some weeks 44.

Q. How much was your paycheck every week, or every two weeks?

A. Oh, it ran from $60 up to $80.

Q. Was that for one week, or for the pay?

A. For the two weeks.

Q. For that pay?

A. Yes.

Mr. Swiren: I think it will help the record, Mr. Walsh—

Mr. Walsh: I beg your pardon?

Mr. Swiren: I think it will help the record to bring out the fact that those checks are bi-monthly checks.

Mr. Walsh: That is what I understand.

Trial Examiner Dudley: By-monthly? You mean, bi-weekly.

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: They are bi-weekly checks.

Mr. Walsh: They are bi-weekly, not bi-monthly.

Mr. Swiren: Bi-weekly, yes.

1416 Mr. Keele: They are semi-monthly.

Mr. Swiren: Pardon me, semi-monthly is correct.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) How much did your weekly pay average?

A. Oh, if I worked 40 hours, that would be a little over $30 a week.

Q. A little over $30?

A. Yes.

Q. How much money have you earned since the 26th of February?

A. Nothing.

Q. Are you one of the men who occupied the plant between the 17th and the 26th of February?

A. What do you mean by that?

Q. Did you stay in the plant?

A. Yes.

Q. With the men?

A. Yes.

Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. (No answer.)

Q. Were you in the trial last week here?

A. No.

Q. When work stopped on the 17th of February, did
1417 the management ask that the work stop?

A. You mean, if the factory was running?

Q. Yes.

A. No, it wasn't.

Q. Did the management ask you to quit work?

A. Yes.

Q. Did the management stop the work?

A. Everybody.

Q. I am afraid you do not understand my question. The stopping of work was caused by the men taking over the plant, was it not?

A. I don't know what you mean.

Q. I mean, did the work stop because the men took over the plant?

A. Yes. All the work stopped there, yes.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Johnson, you were in the maintenance department?
A. In the maintenance department, yes.
Q. As a carpenter?
A. Yes.
Q. How long did you say you have been with the company?
A. About 18 years; since 1919.
Q. You had been there steadily during that time?
1418 A. What is that?
Q. You had been there steadily during that time?
A. What?
Q. You had been steadily constantly?
A. Oh, yes, yes, yes.
Q. And your weekly pay check was what, $40 a week, about?
A. No; a little over $30.
Q. A little over $30?
A. Yes.
Q. You were in building 3 or building 5, which?
A. Building 5.
Q. You were in building 5 from the 17th of February to the 26th of February?
A. Yes.
Q. The entire time?
A. Yes.
Q. You went in there at the same time the other men went in?
A. Yes.
Q. Did you make any application for reinstatement or reemployment with the company after the 26th?
A. No.
Q. Why did you not?
A. Why should I? I didn't hear anybody else did it. Of course, I didn't intend to go back before they all went back.
1419 Q. You do not intend to go back before they all go back?
A. No.
Q. You would not have gone back if you had been offered a job, would you?
A. No.

Q. You do not want to work there without the others?
A. Unless the others went to work.
Q. How old are you?
A. Fifty-eight.
Q. Fifty-eight?
A. Yes.
Q. Did you say you had not had any employment since the 26th of February?
A. Yes.
Mr. Keele: That is all, I think.
Mr. Walsh: That is all.
Trial Examiner Dudley: That is all, Mr. Johnson.
(Witness excused.)
Mr. Walsh: Vick Bankowisch.

VICK BANKOWISCH called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: State your name, please.
1420 The Witness: I will tell it to you, but I can't spell it.
Mr. Collins: You cannot spell it?
The Witness: No.
Mr. Collins: If I show it to you, here, can you say whether it is correct or not?
The Witness: No, I can't read it.
Mr. Collins: Is it Bankowisch, B-a-n-k-o-w-i-s-c-h?
The Witness: That is right.
Mr. Collins: Were you served with a subpoena, or a notice to come here before the Examiner?
The Witness: Yes.
Mr. Collins: I would like to claim his privilege under Section 11, paragraph 3 of the National Labor Relations Act, if the Examiner please.
Trial Examiner Dudley: The privilege is granted.
Q. (By Mr. Walsh) What is your address?
A. 1212 Wadsworth.
Q. Waukegan?
A. North Chicago.
Q. How long were you employed by Fansteel?
A. Eighteen years.

Q. What kind of a job did you have?
A. Swedging.
Q. When did you join the union?
A. 1926.
1421 Q. 1926?
A. I mean, 1936, on the first part of July.
Q. Did the plant operate between the 17th and the 26th of February?
A. (No answer.)
Q. Was there any work going on at the plant between the 17th and the 26th of February?
A. No.
Q. When did you draw your last pay from the company?
A. February, ain't it? I don't know what check I got that month.
Q. The strike, I think was in February.
A. In February I drawed it. It was about the 27th I drawed my check.
Q. You did draw your check about the 27th of February?
A. Yes.
Q. Did the company take up your pass then?
A. Yes.
Q. Did anybody ask you to come back to work?
A. No.
Q. Did you talk to anybody about coming back to work down there?
A. No.
Q. How much did you get per hour?
A. 65.
1422 Q. How many hours a week did you work?
A. Forty.
Q. How much did you get per week?
A. Around about $26.
Q. How much money have you earned since February 26th?
A. Nothing.
Q. Are you one of the men who stayed in the plant?
A. I did.
Q. Are you one of the men who was tried here last week?
A. Yes, I did.
Q. Are you one of the defendants in the injunction case?
A. Yes.
Q. When the work stopped on the 17th of February, did the management ask you fellows to quit work?

A. No.

Q. The work stopped because you took over the buildings, is that right?

A. Yes. We stopped.

Q. Nobody has asked you to come back to work since?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) You have not asked anyone to come back to work, have you?

A. No, I didn't.

1423 Q. You were there through the entire time from February 17th to February 26th?

A. Yes.

Q. Which building were you in?

A. 3.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: I will recall Mr. Jackaway.

JOHN W. JACKAWAY, recalled as a witness on behalf of the National Labor Relations Board, having been previously duly sworn, further testified as follows:

Direct Examination.

Mr. Walsh: This witness has been on the stand, your Honor.

Trial Examiner Dudley: Very well.

Q. (By Mr. Walsh) How long were you employed by Fansteel, Mr. Jackaway?

A. A little better than seven years.

Q. What was your job?

A. Well, I don't remember what they call it.

Q. It was in the sintering department, was it not?

A. I don't remember just what they call it. I was working on the reclaims from out in the yard.

1424 Q. That is, you were reclaiming the tantalum deposits that they discovered out in the back yard, is that right?

A. That is right.
Q. Did the plant operate—
A. They were working it over, you know.
A. I see. Did the plant operate between the 17th of February and the 26th of February?
A. Between the 26th—
Q. No, between the 17th and the 26th.
A. I don't know. Not that I know of.
Q. Were you in the plant during that period?
A. I was in the plant, yes.
Q. Do you know of any other operations that went on during the time you fellows were in there?
A. No.
Q. When did you get your last pay?
A. I don't remember exactly but it hasn't been very long ago. I got it probably 30 days ago, or something like that.
Q. Did the company take up your pass when you got your last pay?
A. Yes.
Q. Did you talk to anybody about coming back to work?
A. (No answer.)
Q. Did you talk to anybody about coming back to work, or did they offer you reemployment?
1425 A. Well, there was a man sent to my house for me to come back.
Q. I believe you told us about that the other day, did you not?
A. Yes.
Q. What was your hourly rate of pay?
A. 55 cents an hour.
Q. How many hours a week did you work?
A. Forty.
Q. What did your weekly pay amount to?
A. It was different. It was probably $35 or $40.
Q. A week?
A. Yes.
Q. You are one of the men who occupied the buildings—
A. Yes.
Q. Between the 17th of February and the 26th of February?
A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. No.

Q. When the work stopped on the 17th of February, did the management order the work stopped?
A. Not that I know of.
Q. The stoppage was caused by the men taking over the building, was it not?
1426 A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) What was this incident with reference to somebody coming to your house and asking you to work?
I have forgotten about it.
A. Mr. Chapman was sent to the house.
Q. I beg your pardon?
A. Mr. Chapman.
Q. Yes. What did he say?
A. He wanted to know if I wanted to come back to work.
Q. You did not go back to work, did you?
A. No.
Q. You were in building 3, or building 5, which?
A. 3.
Q. You were in building 3 from February 17th to February 26th, were you not? You were in building 3 from February 17th when they took it over, until February 26th when they left the building?
A. Yes.
Mr. Keele: That is all.
Mr. Walsh: There is just one more question, which I forgot to ask.

Redirect Examination.

Q. (By Mr. Walsh) How much money have you
1427 earned since February 26th?
A. I don't remember.
Q. What have you worked at?
A. What?
Q. Have you worked at anything since?
A. Since that time?
Q. Yes.
A. No.
Q. You have not done any work at all?
A. A little charity work, that is all.

Mr. Walsh: All right, that is all.
Mr. Keele: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Ted Christianson.

TED CHRISTIANSON, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Ted Christianson?
The Witness: Yes.
Mr. Collins: You were served with a subpoenae, were you not, Mr. Christianson to appear here before the Examiner?
The Witness: Yes.
1428 Mr. Collins: I would like to claim his privilege, if the Examiner please, under Section 11, Paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: It is so granted.
Q. (By Mr. Walsh) What is your address, Mr. Christianson?
A. 432 Coleville Place.
Q. How long have you been employed by Fansteel?
A. Since 1933, this last time, and then from 1921 to 1923, I think it was.
Q. What was your job there?
A. Carpenter.
Q. You were in the maintenance department?
A. In the maintenance department, yes.
Q. When did you join this union?
A. About in July, I think it was.
Q. Did the plant operate between the 17th and 26th of February of this year?
A. No, sir.
Q. When did you draw your last pay?
A. I think it was around August, the part of August, or something like that. I wouldn't say for sure, but it is something like that.
Q. Are you sure it was the month of August?
A. Not August; March.

Q. March?
1429 A. Yes.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about coming back to work?
A. No.
Q. Did they offer to take you back?
A. No, sir.
Q. They did not offer you your job back?
A. No, sir.
Q. What was your hourly rate of pay?
A. 35 cents.
Q. How many hours a week did you work?
A. Forty.
Q. What did your weekly pay amount to?
A. About $34.
Q. How much have you earned since February 26th?
A. About $50.
Q. What did you do?
A. I did repair work.
Q. When you are normally employed at Fansteel, do you do any work on the outside for pay?
A. No.
Q. Are you one of the men who occupied the buildings?
A. Yes.
Q. You were there from the 17th until the 26th of February, were you not?
1430 A. Yes.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. I was called for the injunction.
Mr. Swiren: What was that answer?
Mr. Walsh: "I was called for the injunction" is his answer.
Q. (By Mr. Walsh) When work stopped on the 17th of February, did the management ask that the work stop?
A. No, sir.
Q. The stoppage was caused by the men taking over the building, is that right?
A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) Did you ever make application for re-employment?

A. No, sir.

Q. Why did you not apply for reinstatement of reemployment?

A. Well, I didn't on account of not recognizing the lodge.

Q. That is the only reason you had—

A. Yes.

Q. —for not applying for reemployment?

A. Yes.

1431 Q. You were in building 3 or building 5, which?

A. I was in building 5.

Q. You went in there at the time that the buildings were seized by the men on February 17th?

A. Yes.

Q. You stayed there until February 26th?

A. Yes.

Q. How old are you, Mr. Christianson?

A. Fifty-six.

Q. You knew that on February 17th you were discharged there, did you not?

A. That is what I heard, we was discharged, yes.

Q. You heard you were discharged? You heard of the discharge?

A. Yes.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all, Mr. Christianson.

(Witness excused.)

Mr. Walsh: Leo P. Daluga.

LEO P. DALUGA, was called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Leo P. Daluga?

The Witness: It is.

1432 Mr. Collins: Spell your last name for the reporter.

The Witness: D-a-l-u-g-a.

Mr. Collins: Were you served with a subpoena to appear here before the Examiner, Mr. Daluga?

The Witness: I was.

Mr. Collins: I would like to claim the privilege of the witness, if the Examiner please, under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh) What is your address, Mr. Daluga?

A. 534 Oak Street, Waukegan, Illinois.

Q. How long were you employed by Fansteel?

A. 25 years.

Q. What was your job?

A. Cutting contact discs, in the contact department.

Q. When did you join the union?

A. July 6th.

Q. 1936?

A. 1936.

Q. Did the plant operate between the 17th and the 26th of February?

A. It did not.

Q. When did you draw your last pay?

A. March 8th, I think.

Q. Did the company take up your pass at that time?

1433 A. They did.

Q. Did you go to the plant to receive your pay?

A. I did.

Q. Did you talk to anybody there about going back to work?

A. I did not.

Q. Have you been offered reemployment or reinstatement by the company?

A. I haven't.

Q. How much was your weekly rate of pay?

A. 55 cents an hour.

Q. How many hours per week did you work?

A. Forty, and sometimes 48.

Q. What was your average weekly pay check? What would it amount to?

A. From $30 to $35.

Q. That is, per week?

A. Per week.

Q. How much have you earned since February 26th?

A. $11.

Q. What did you do to earn that?

A. I was judge of the election.

Q. Are you one of the men who occupied the buildings from the 27th of February to the 26th of February?

A. I am.

Q. Were you one of the respondents in the contempt case—

1434 A. I was.

Q. And one of the defendants in the injunction suit?

A. I was.

Q. When the work stopped on the 17th of February, did the management ask that the work stop?

A. They didn't.

Q. The stopping was caused by the men taking over the buildings, was it?

A. It was.

Mr. Walsh: That is all.

Q. (By Mr. Keele) Did you ever make any application for reemployment?

A. I did not.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: George Smith.

Mr. Swiren: Pardon me. I would like to have the reporter read me one or two of those questions. Mr. Reporter, will you go back and read me the witness' testimony concerning his hourly and weekly wages?

(The record was read as above recorded.)

Mr. Walsh: I will call George Smith. This witness has already testified, your Honor.

1435 Trial Examiner Dudley: All right.

GEORGE SMITH, recalled as a witness on behalf of the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) How long were you employed by Fansteel, Mr. Smith?

A. Since October 2nd, 1933.

Q. What was your job?

A. Plater and de-plater.

Q. When did you join the union?
A. I think it was in September.
Q. 1936?
A. Yes.
Q. Did the plant operate between the 17th of February and the 26th of February?
A. No.
1436 Q. When did you draw your last pay?
A. March 5th.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about going back to work?
A. Yes.
Q. Who did you talk to?
A. Luther Henry and Florian Schardt.
Q. I believe you testified about that the other day, did you not?
A. Yes.
Q. What was your hourly rate of pay?
A. 57 cents an hour.
Q. How many hours a week did you work?
A. 40 hours.
Q. What was your weekly pay check?—I mean, what was your weekly pay?
A. $22.80.
Mr. Swiren: What was that?
Mr. Walsh: $22.80.
The Witness: $22.80.
Q. (By Mr. Walsh) How much have you earned since February 26th?
A. About $8.50.
Q. What did you do?
1437 A. Painting.
Q. Normally when you are employed, do you work on the outside for pay?
A. No, I don't.
Q. Are you one of the men who occupied the buildings between the 17th of February and the 26th of February?
A. I am.
Q. Were you one of the respondents in the contempt case?
A. Yes.
Q. And one of the defendants in the injunction case?
A. I was.
Q. When the work stopped on the 17th of February, did the management ask that the work be stopped?

A. No.

Q. The stoppage was caused by the men taking over the buildings, is that right?

A. Yes.

Q. Aside from the instances in which Schardt and Henry offered you reemployment, you have had no other offers of reemployment from the company, have you?

A. No, I haven't.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) Will you tell us about that incident when you were asked to come back to work, Mr. Smith?

1438 A. About the first part of March I went down for my check, and Luther Henry was in the office. He asked me if I wanted to sign an application for a job.

Q. What did you say.

A. I said, "No, I don't want to sign an application for a job until the rest of the men come back. Then I will come back with them."

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused, Mr. Smith.

(Witness excused.)

Mr. Walsh: Steve Luczo.

STEVE LUCZO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Collins) Your name is Steve Luczo?

A. Steve Luczo.

Q. Spell your last name, please, for the reporter.

A. L-u-c-z-o.

Q. Were you served with a subpoena?

A. Yes.

Mr. Collins: I would like to claim the privilege of the witness under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: It may be granted.

1439 Q. (By Mr. Walsh) What is your address, Mr. Luczo?

A. 2303 Kirsten Avenue, North Chicago.

Q. How long were you employed by Fansteel?

A. 8 years, a little better than 8 years.

Q. What was your job?

A. Wire drawing.

Q. When did you join the union?

A. November 11, 1936.

Q. Did the plant operate between the 17th and 26th of February?

A. No.

Q. When did you draw your last pay?

A. Is was March, I guess, about the 5th. I don't exactly know which date.

Q. Did the company take up your pass at that time?

A. They tried to, but I told them I lost it. I told them I lost it in the plant, in the building. Maybe they found it.

Q. Did you talk to anybody about coming back to work?

A. No, never.

Q. Did anybody offer you your job back?

A. No.

Q. What was your hourly rate of pay?

A. 65 cents.

Q. How many hours a week did you work?

A. Usually 40, but sometimes we worked overtime,
1440 and on Saturday. Overtime—for overtime we got time and a half.

Q. What did your weekly pay amount to?

A. About $26.

Q. How much have you earned since February 26th?

A. After that?

Q. After that.

A. $8.

Q. What did you do to earn that?

A. I helped my friend plant flowers in Lake Forest.

Mr. Swiren: I cannot hear the witness. What was that answer?

Mr. Walsh: He said he helped his friend plant flowers in Lake Forest.

Trial Examiner Dudley: Did you say you earned $8?

The Witness: $8.

Q. (By Mr. Walsh) When you are normally employed, do you do any work on the outside for pay?

A. No.

Q. You are one of the men who occupied the plant from February 17th to February 26th?

A. Yes.

Q. You were one of the respondents in the contempt case—

A. Yes.

Q. —and one of the defendants in the injunction case?

A. Yes.

1441 Q. When the work stopped on the 17th of February, did the management ask that the work stop?

A. No.

Q. The stoppage was caused by the men taking over the plant, is that right? Or taking over those buildings?

A. Yes.

Q. You have never been offered your job back, have you?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) Did you ever make application for your job?

A. No.

Q. What building were you in, 3 or 5?

A. I was in building 5. I worked there, too.

Q. You were in building 5 from February 17th to February 26th?

A. Yes.

Q. You went in when the other men went in, and came out when they came out?

A. At the same time, yes.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

1442 Mr. Walsh: Frank Scheuer.

FRANK SCHEUER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is Frank Scheuer?
The Witness: Yes.
Mr. Collins: Spell your last name.
The Witness: S-c-h-e-u-e-r.
Mr. Collins: Are you the one they call Sonny Scheuer?
The Witness: Yes.
Mr. Collins: Did you receive a subpoena to appear here before the examiner?
The Witness: Yes.
Mr. Collins: I would like to claim his privilege under section 11, paragraph 3, of the National Labor Relations Act, if the examiner please.
Trial Examiner Dudley: The privilege is granted.
Mr. Walsh: I would like to move to amend the complaint, to show that this man was improperly denominated in the complaint as "Sonny Shure." His name is "Frank Scheuer."
Mr. Swiren: We corrected that error in the complaint, and all other errors in the complaint in our answer, Mr. Walsh. You evidently have not paid enough attention to the answer to find that out.
Mr. Walsh: For which I thank you.
1443 Trial Examiner Dudley: The motion is granted.
Mr. Keele: We have no objection to the amendment.
Q. (By Mr. Walsh) What is your address?
A. 313 Water Street.
Q. How long were you employed by Fansteel?
A. Two weeks.
Q. What type of work did you do there?
A. Plater.
Q. What department were you in?
A. Contact.
Q. When did you join this union?
A. About a week before the strike.
Q. Did the plant operate between the 17th and 26th of February?
A. No, sir.
Q. When did you get your pay from the plant, your last pay from the plant?

A. About March 5th.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about going back to work?
A. No.
Q. Did anybody offer reemployment to you?
A. No.
Q. What was your hourly rate of pay?
1444 A. 45 cents an hour.
Q. How many hours did you work a week?
A. 40.
Q. What was your weekly pay? What did that amount to?
A. $18.50.
Q. How much money have you earned since February 26th, 1937?
A. About $50.
Q. What did you to to earn that money?
A. Truck driving.
Q. When you were normally employed at Fansteel, did you do any work on the outside for pay?
A. No.
Q. You are one of the men who occupied the buildings between the 17th and 26th of February?
A. Yes, sir.
Q. Were you one of the respondents in the contempt case—
A. Yes.
Q. —and one of the defendants in the injunction case?
A. Yes.
Q. When the work stopped on February 17th, did the management order the work to be stopped?
A. No.
Q. The stoppage was caused by the men taking over the buildings, is that right?
A. Yes.
1445 Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) You had only been working for the Fansteel Company about 2 weeks at the time the buildings were seized?
A. Yes.
Q. You were in building 3, or building 5, which, during the period from February 17th to February 26th?

A. I was in building 5.
Q. You were there during the entire time?
A. Yes.
Q. So of the entire time you spent in the employ of the Fansteel Company, about half of it was spent in a sit-down strike, is that right?
A. Yes.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused, Mr. Scheuer.
(Witness excused.)
Mr. Walsh: I will recall George Mondro.

GEORGE MONDRO, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) You have been on the stand before, have you not, Mr. Mondro?
1446 A. Yes.
Q. How long were you employed by Fansteel?
A. About 8 months.
Q. What did you do there?
A. I was in the chemical building.
Q. Talk up so we can hear you.
A. I was in the chemical building.
Mr. Swiren: I still cannot hear you.
Mr. Walsh: He said he was in the chemical building.
Trial Examiner Dudley: Talk so the people in the back row can hear you.
Q. (By Mr. Walsh) When did you join the union?
A. In July.
Q. Did the plant operate between February 17th and February 26th?
A. No.
Q. When did you draw your last pay?
A. Sometime in March.
Q. At that time did the company take up your pass?
A. Yes.
Q. That was the time you filled out an application, which you told us about yesterday, is that right?

A. That is right.
Q. What was your hourly rate of pay?
A. 49 cents.
1447 Q. How many hours a week did you work?
A. 40.
Q. What did your weekly pay amount to?
A. $20 to $22.
Q. $20 to $22 a week?
A. Something like that. We worked 40 hours.
Q. How much money have you earned since February 26th?
A. $65.
Mr. Swiren: I cannot understand you. I do not know whether it is because of the gum, or because you do not talk loud enough.
The Witness: $65.
Q. (By Mr. Walsh) What did you do to earn that money?
A. Garden work.
Q. Normally when you are employed, do you work on the outside for pay?
A. No.
Q. Are you one of the men who was in the plant?
A. No.
Q. Were you on the night shift?
A. Yes.
Q. Did you report for work on the 17th of February?
A. No.
Q. When did you report for work?
A. On the 16th.
1448 Q. The 16th?
A. Yes. I worked part of the 16th and part of the 17th.
Q. You worked the night of the 16th and the 17th, is that right?
A. Yes.
Q. Why did you not go back to work on the 18th?
A. Because—
Q. Or, rather, the night of the 17th?
A. Because my brother told me the plant was on strike, so I thought it didn't pay to go back.
Q. Did you go back later to get your job?
A. No.
Q. Did you talk to anybody about getting your job back?
A. No.

Q. Did you occupy any of the plant buildings during this trouble, between the 17th and 26th of February?

A. No.

Q. Were you one of the respondents in the contempt case, or one of the defendants in the injunction case?

A. No.

Q. You were not present when this trouble broke out, were you?

A. No.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele) You were asked to come back
1449 to work, you say?

A. Right; four times.

Q. Four times?

A. Right.

Mr. Keele: That is all.

Q. (By Mr. Walsh) Why did you not go back to work?

A. Because I joined the union.

Mr. Swiren: Read that answer, please, Mr. Reporter.

(The answer was read.)

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: Jasper Leskovec.

JASPER LESKOVEC, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: State your name, please.

The Witness: My name?

Mr. Collins: Yes.

The Witness: Jasper.

Mr. Collins: What is your last name?

The Witness: Leskovec.

Mr. Collins: Spell your last name for the reporter.

1450 The Witness: L-e-s-k-o-v-e-c.

Mr. Collins: Did you receive a subpoena to appear here before the examiner?

The Witness: Yes.

Mr. Collins: I would like to claim the witness' privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege may be granted.

Q. (By Mr. Walsh.) Where do you live, Jasper?
A. 1039 Adams Street, North Chicago.
Q. How long were you employed by Fansteel?
A. 11 years.
Q. What did you do down there?
A. I was in the chemical department.
Q. When did you join the union?
A. In July 1936.
Q. Do you know whether the plant operated between the 17th and the 26th of February?
A. No.
Q. When did you get laid off at the plant?
A. I got laid off on the 24th of November.
Q. The 24th of November 1936?
A. Yes.
Q. How did they come to lay you off?
A. They told me, "You got no job no more."
1451 Q. They said, "You got no job no more"?
A. Yes.
Q. When did you join the union?
A. In July, the middle of July.
Q. Were you an officer of the union?
A. Yes.
A. Are you an officer of the union now?
A. (No answer.)
Q. Do you hold any office in the union?
A. No.
Q. You are just a member?
A. Yes.
Q. What was your hourly rate of pay?

Mr. Swiren: That is objected to.

Trial Examiner Dudley:: Objection overruled.

Mr. Swiren: Just a minute. I think the examiner ought to hear me.

Trial Examiner Dudley: Go ahead.

Mr. Swiren: Here is a man who was discharged long before any of the dates named in the complaint.

Trial Examiner Dudley: Let us put it in.

Mr. Swiren. Does it not make any difference when he was discharged, or why?

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) What did they say to you when
1452 they laid you off?

A. They say, "You got no job no more."

Q. "You got no job no more"?

A. Yes.

Q. How much pay were you drawing?

A. I got, the last day, 49 cents.

Q. 49 cents an hour?

A. An hour.

Q. How much did that amount to a week?

A. I guess $19. $19.

Q. How much money have you earned since you were laid off?

A. I don't remember exactly. I think it was $35.

Q. What did you do to earn that money?

A. What did I do to make that money?

Q. What did you work at?

A. (No answer.)

Q. What did you work at to earn that $35?

A. What do you mean?

Q. You said you earned $35 since you have been laid off. What did you work at?

A. You asked me how much I got last pay day—

Q. That $35, was that your last pay check?

A. Yes.

Q. Have you earned any money since you have been laid off?

A. No.

1453 Q. No money at all?

A. No.

Q. You were not in any of this trouble they had out here, were you?

A. No.

Mr. Walsh: That is all.

Mr. Keele: Just a minute.

Mr. Walsh: Do not leave the stand yet.

Cross-Examination.

Q. (By Mr. Keele.) You were not on any of the committees of the union, were you?
A. No.
Q. You did not take any particularly active part in the union, did you?
A. (No answer.)
Q. You were just a member, were you not?
A. Just a member.
Q. You had been a member since July?
A. Yes.
Q. You were laid off on the 24th of November?
A. Yes.
Q. You were in what department, the chemical department?
A. Yes.
Q. They told you at that time when they laid you off that they did not have any work for you, did they not?
1454 A. Yes.
Q. Who told you that?
A. My foreman, Presler.
Q. Who?
A. Presler.
Q. Presler?
A. Yes.
1455 Q. You did not complaint to the union about being laid off, did you?
A. No.
Q. You believed they were out of work there at that time, did you not?
A. Yes.
Q. They just did not have a job for you at that time, is that not right?
A. They told me like that.
Q. You had no reason to disbelieve them, did you?
A. I have lots of reasons, but what is the use?
Q. What is the use?
A. Yes.
Q. Did they give you any other reason for laying you off?
A. No.
Q. At that time?
A. No.
Mr. Keele: That is all.

Q. (By Mr. Walsh.) Did you ever talk to your boss about the union?
A. No.
Q. Did the boss ever talk to you about the union?
A. No.
Mr. Walsh: That is all.
Trial Examiner Dudley: Just a minute.
1456 Mr. Swiren: Do you still want his testimony in, Mr. Walsh?
Mr. Walsh: Yes, leave it in.
Mr. Swiren: I renew my objection, and move to strike the testimony of the witness.
Trial Examiner Dudley: Well, Mr. Swiren—
Mr. Swiren: Well, I will withdraw the motion, to save time. We can argue this out at the end of the hearing.
Mr. Walsh: All right.
Trial Examiner Dudley: That is all. You are excused.
(Witness excused.)
Mr. Walsh: John Starovich.

JOHN STAROVICH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: Your name is John Starovich?
The Witness: Yes.
Mr. Collins: Spell your last name.
The Witness: S-t-a-r-o-v-i-c-h.
Mr. Collins: Were you served with a subpoena—
The Witness: Yes.
Mr. Collins: —to appear here today?
The Witness: Yes.
Mr. Collins: I would like to claim the privilege of the
1457 witness under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.
Q. (By Mr. Walsh.) Where do you live?
A. 2128 Hervey Avenue, North Chicago.
Q. How long were you employed by Fansteel?
A. I started to work there July 15th, 1926.
Q. What was your job?
A. Electrolysis.

Q. In what department?
A. The tantalum department.
Q. When did you join the union?
A. In July, 1936.
Q. Do you know whether the plant operated between February 17th and February 26th?
A. I don't have a recollection of that time, because I haven't been inside of—I haven't been near there for some time.
Q. You were laid off on February 13th, 1937?
A. Right.
Q. What was the reason for your layoff?
A. They claimed that they ran out of crystals, and there was no work to be had until there were more crystals made up.
Q. What did they tell you about when you would be called back to work?
1458 A. The foreman told me they would let me know over the phone as soon as there are crystals to work with.
Q. Did you get laid off like that from time to time?
A. Occasionally, yes.
Q. Did I ask you when you joined the union?
A. Yes.
Q. You have never been called back to work since the plant reopened, is that right?
A. No, sir.
Q. Did you have any discussions with your boss or foreman about the union?
A. No, I haven't.
Q. Did you take any active part in the strike that went on down there?
A. No, sir.
Q. When you were working—strike that out.
How much was your hourly rate of pay when you were there?
Mr. Swiren: Just a moment. That is objected to. There is no showing that this man even falls in the class of the first group.
Trial Examiner Dudley: It may be admitted. You may answer.
The Witness: 68 cents per hour.
Q. (By Mr. Walsh.) How many hours did you work a week?

A. Some weeks I would work 40 hours. Some weeks
1459 I would work 24 hours. Some weeks I would work 36 hours, however it happened to run.

Q. How much was your weekly average pay? How much would that amount to?

A. If I worked 40 hours, that would be $27.20 a week, for 40 hours.

Q. How much have you earned since February 26th?

A. About $10.28.

Q. What were you doing?

A. Selling.

Q. Selling what?

A. I sold a sanitation system to a lady.

Q. Now, normally when you are working at Fansteel do you work on the outside?

A. I have the last few years, the last couple of years.

Q. How much money do you normally make on the outside?

A. I do that merely to get a little spending money. I don't go right along after it.

Q. What do you do?

A. Small printing. Last year I sold Christmas cards.

Q. There is not any regular income from that, is there?

A. No. It just merely means I make a few nickels on a box of cards, or something like that. I like to do it.

Q. You were not one of the men in the plant?

A. No, sir.

1460 Q. Were you a respondent in the contempt case?

A. No.

Q. Or a defendant in the injunction case?

A. No.

Q. Did your boss know you were a member of the union?

A. I really could not tell you. The only way that came up is when I was on the picket line, and Mr. Anselm saw me carrying a placard.

He made sure he knew who it was, and that is the reason I haven't been called back to work, on account of the union activity.

Q. That is the part you took in the strike?

A. That is the part I took.

Q. How long were you on the picket line?

A. I was there for a week or so. Then I got sick, and went. I had an absessed ear.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) What was this work you did outside of your employment for Fansteel during the last two years?

A. Selling a few Christmas cards in season.

Q. Did you go from house to house??

A. Sometimes. Sometimes I went to friends' homes that I have known before.

Q. Because you like that work?

1461 A. Yes, I like it.

Q. You were discharged or laid off as you said, I believe on the 13th of February?

A. Yes. That was on Saturday.

Q. That was on Saturday?

A. Yes.

Q. That was four days before the men took the plant over on the 17th, was it not?

A. Let's see; I believe so.

Q. You had not been working full time there for some time, had you?

A. Up until that time I have been. There was a few weeks in between there in the last where I got in 24 hours there, and one week I got in 32 hours, and it kept on irregular.

Q. Work was rather slow in your department, was it not?

A. When we did have enough to do, they gave me a helper.

Q. It was irregular, is that it? Sometimes you would have a great deal to do, and sometimes there would not be enough to keep you busy?

A. Yes, something like that.

Q. They told you when they laid you off you would have to wait until when, before they could take you back?

A. They said they would phone me when they would need me, as soon as there would be crystals enough to work with.

1462 Q. They said they would call you as soon as there were crystals to work with?

A. Yes.

Q. You do not know whether there has been a necessity for your services, or whether they have had enough crystals, is that it?

A. Oh, yes; I know that well.

Q. Oh; you do?

A. Sure.

Q. Have you been back to the plant since the 13th of February, or been in the plant?

A. No. I haven't been in the plant, but I know the fellow that is running the outfit now.

Q. Who is he?

A. Ray Pearson.

Q. He keeps you informed on that?

A. I know that.

Q. I say, he tells you about that, does he?

A. He told me there was other fellows running the outfit five days a week.

Q. That is the only way you know it?

A. That is the only way. I haven't been inside, no.

Q. You say the reason you have not been re-employed is because of the fact Mr. Anselm saw you carrying a picket banner?

A. Exactly.

1463 Q. How do you know that?

A. How do I know that? Now, I will explain that. He drove up to the office steps, and it happened this particular morning—

Q. He does that every morning, does he not?

A. I don't know. I wasn't—

Q. You have been carrying a picket banner out there, have you not?

A. I haven't been out there all the time. This happened this particular morning.

Q. That is unusual, for him to drive up to the office steps, is that right?

A. He was the first man that drove a car right near the office steps on that particular morning.

Q. Most of the office help park there, do they not?

A. He started towards the office—

Q. Wait a minute. Answer my question. Do not most of the office help park there?

A. I suppose.

Q. This was all very normal, was it not? There was nothing unusual.

A. He happened to be the first one there that morning.

Q. All right.

A. He saw me carrying that banner, and he made sure he knew who was carrying that banner.

1464 He started towards the office steps, and then he came back to the car, just so as to give me time enough to get closer, so he could see me.

Q. When he saw you, do you think maybe he went back to lock his car, when he saw who it was that was carrying the banner?

A. I didn't see him lock it.

Q. He may have done that, may he not?

A. Perhaps, but I didn't see him use any keys.

Q. But you are very sure that he made sure that it was you who was carrying the banner?

A. He wanted to give me a little more time to get up a little closer.

Q. Is that the only reason?

A. I suppose.

Q. Did he tell you that was the reason?

A. I didn't talk to him.

Q. Then that is purely a supposition on your part, is it not?

A. I was just about like from here (indicating), to you, from him at that time.

Q. And you thought he wanted to get a little closer look at you?

A. Sure. He wanted to make sure.

Q. You are enjoying your testimony on the stand, 1465 are you not?

A. Perhaps.

Q. You were sitting over here with the girls, were you not, just before you came up?

A. I was sitting with my wife, yes.

Q. Oh; with your wife. Now, let us get this straight. You say that Mr. Anselm was about 15 feet away from you?

A. Probably 15 or 20 feet.

Q. And you think he could not tell who you were at that distance?

A. No. I was coming up. I was walking up. The closest I was to him was about 20 feet, probably.

Q. I see.

A. Perhaps 20 feet.

Q. Do you not think that perhaps he wanted to read what was on your banner?

A. We sure had plenty big enough letters on it.

Q. You are five feet six or seven or eight inches tall, are you not?

A. Sir?

Q. You are five feet six inches tall, about, are you not?

A. I think it is about five and a half.

Q. Do you think Mr. Anselm could have seen you at a distance of 20 feet, and not know who you were?

A. Probably, he did, yes.

1466 Q. So really, this is all a fabrication of your own mind, is it not?

A. No, it is not a fabrication. It is the honest truth.

Q. What else have you to base it on, that that was the reason you did not go back?

A. Because I was carrying that banner.

Q. You mean that if you were in Mr. Anselm's position, and you had seen Anselm carrying a banner like that, you would not let him come back? Is that what you are thinking?

A. I didn't get that straight.

Q. I say, if the positions were reversed, you say you would not let Mr. Anselm come back, if he had been carrying that banner, and you had been in his place? Is that it? Just answer "Yes" or "no." Is that the way you figure?

A. Perhaps.

Mr. Keele: That is all.

Trial Examiner Dudley: Mr. Starovich, I have one or two questions.

Q. (By Trial Examiner Dudley.) During the time of the so-called sit-down strike, did you participate by helping the strikers in any way?

A. No.

Q. Did you help bring food in or out?

A. No.

Q. How long were you on the picket line?

1467 A. For about a week.

Q. That was after the strike was over?

A. That was after the boys were evicted.

Q. I see. Why did you stop being on the picket line?

A. I had an abscessed ear.

Trial Examiner Dudley: Oh, yes. Is that all?

Mr. Keele: I have one or two more questions.

Q. (By Mr. Keele.) You were not an officer of the union, were you?

A. No.

Q. Were you a member of any of the committees?

A. No.

Q. You did not take an active part in union affairs other than being a member, did you?

A. That is all.

Q. Did you ever discuss with your foreman the question of your being a member of the union?

A. That question was never brought up between the foreman and me.

Q. You never have gone back and applied for re-employment, have you?

A. No. I am still waiting for that telephone call.

Q. Have you made any money since then?

A. $10.28.

Q. What?

1468 A. $10.28.

Mr. Keele: That is all.

Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh.) Was there ever any criticism of your work, when you worked out there?

A. Well, as far as work was concerned, there was one time when this new foreman came along one day—production fell a little bit, by about three pounds,—and he said to me one day, he says, "Now, we expect you to come up with 50 pounds or more, and not 50 pounds or less."

Prior to the time he was working there they were satisfied with as little as 35 pounds a day.

Q. Did you get your pay raised at any time?

A. My pay was raised the 16th of August. Up to that time I was getting 58 cents an hour.

Mr. Swiren: The 16th of November, you mean, I think.

The Witness: I said, the 16th of August.

Q. (By Mr. Walsh.) And on the 16th of August, 1936 you got a pay raise?

A. I got a pay raise of 5 cents an hour. That is when the union started to get active.

Q. Did you get any pay raises between August and the time they laid you off?

A. We got a pay raise of 5 cents an hour that was
1469 general throughout the plant, beginning the 16th of November, as near as I can remember.

Q. When did this foreman complain about your production?

A. That was some time in January I believe. That was the time when they started to use this residue from the back of the buildings.

Mr. Keele: Which year was that?

Mr. Walsh: 1937.

1470 Q. (By Mr. Walsh.) That was in 1937, was it not?

A. January 1937, yes.

Q. Did you draw your final pay from the company?

A. Yes, on the 20th of February.

Q. Did they take up your pass at that time?

A. No.

Q. You still have your pass?

A. I still have the pass.

Q. You have not been called for work?

A. I have not been called for work.

Q. You are told by people you know in the plant that your job is being operated by somebody else, is that right?

A. I know the man running it now called me up one evening about ten-thirty, and he said, he was going back to work. I said, "Suit yourself."

Q. Yes. Had he been a member of the union?

A. Yes, he was.

Q. He returned to work, is that right?

A. He returned to work, because he owed the company some money.

Mr. Walsh: All right. That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Thomas C. Fagan.

1471 THOMAS C. FAGAN, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Mr. Walsh: This witness has been sworn previously, your Honor.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Walsh.) I believe you testified yesterday you were employed by the company in 1917, is that right?

A. Yes.

Q. You want to correct your testimony now to say you were employed in 1918?

A. 1918.

Q. What was your job down there?
A. At the Fansteel Company?
Q. Yes.
A. In the cutting department, and sometimes brazing, working on plating, tanks.
Q. When did you join the union?
A. In July.
Q. 1936?
A. 1936.
Q. You were a member of the night force in 1937, were you not?
A. I was.
1472 Q. Did you report for duty on the 17th of February?
A. At eight minutes of four in the afternoon.
Q. Did you go to work?
A. No.
Q. They were having trouble at the plant, were they not?
A. Yes.
Q. The plant was not operating, was it?
A. The plant told me, "Nothing doing," and that they will notify me.
Q. Did they ever notify you to return to work?
A. No.
Q. When did you get your last pay from the company?
A. March 5th.
Q. Did they take up your pass?
A. Yes.
Q. What was your hourly rate?
A. 55 cents by the hour, and I worked on piecework.
Q. How much did you earn at piecework?
A. An average, as close as I can give it, of $30, $32, or $33 a week.
Q. How much have you earned since February 26th, 1937?
A. Well, I have earned about $40, I imagine, and now I have got some money coming from the State besides that.
Q. You are employed by the PWA, are you not, or the WPA?
A. No, straight State.
1473 Q. The State Highway Department?
A. Yes.
Q. How much do you get per day there?
A. Five dollars a day.
Q. Over and above the $40 you have already collected, you have some money due you now?

A. Yes.
Q. About how much is that?
A. I think I have $45 coming.
Q. You were not in the plant during the time that the men kept the buildings, were you?
A. No.
Q. You were not one of the respondents in the contempt case, or a defendant in the injunction suit, were you?
A. Not that I know of.
Q. Have you received during the time that you were employed there raises from time to time?
A. I was given a general raise.
Q. Recently?
A. November 16th—is that it? It was about that time.
Q. That was the 5 cents an hour increase?
A. Yes.
Q. Now, did the foreman of your department ever complain about your work?
A. No.
1474 Q. You were active in soliciting members for the union, were you not?
A. Yes.
Q. Did the officers of the company or foremen know that you were a member of the union?
A. Well, I—
Q. Have you discussed it with any of the foremen?
A. No. I never had any discussion myself, but I have sat around when—
Q. Mr. Anselm knew you were a member of the union, did he not?
A. Yes, Mr. Anselm did.
Q. Now, when you reported for work on the 17th of February, they told you they would notify you when you were wanted, is that right?
A. Yes.
Q. Then from time to time during the progress of the trouble they had out there you were present, were you not?
A. Outside of the fence?
Q. Outside of the fence, yes.
A. Yes.
Q. Did you help put any food into the plant?
A. Well, I maybe did the first day.
Q. You suggested to the law enforcing officials that they close the taverns down around that area there—

1475 A. I suggested that to Mr. Anselm.

Q. (Continuing) —so that the people who were sympathizing with the strike could not patronize the taverns, is that right?

A. Yes.

Q. That was on the first night that the trouble broke out?

A. That was the morning of the first gas attack.

Q. That was on the 19th?

A. The 19th of February.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) You were out at building 3 and 5 every day practically, during the period from February 17th to February 26th, during the time the men were in there, were you not?

A. Every day?

Q. Almost every day.

A. I never stayed there a whole day, no.

Q. But you were there at least once, and usually you spent several hours there, during the day, did you not?

A. Not through the day.

Q. Well, or night?

A. Well, I was down there at night once in a while.

Q. You rendered considerable assistance, did you not, in carrying in food and bedding, and in helping to send messages?

A. Not so much.

1476 Q. Well, how many days did you participate in getting food and bedding—

A. The first—

Q. —and other things into the plant?

A. The first and second day.

Q. The first and second day?

A. As I recall it I was out doing some other things.

Q. What?

A. Oh, getting a hold of a little money.

1477 Q. To help take care of the fellows who were inside, and their needs and wants, and those of their families, is that right?

A. Yes.

Q. Well, you did everything you could to help keep those men in there, did you not, during that period, and to make it comfortable for them?

A. I think so.

Q. What is that?
A. I think did some.
Q. Well, you did everything you could, everything you thought of that was reasonable, did you not, to help them stay in there?
A. I wouldnt say I did everything.
Q. Well, what did you not do that occurs to you now that you might have done?
A. (No answer.)
Q. Can you think of anything?
A. I didnt' help them get any lights, or any heat.
Q. Well, it would have been a pretty hard thing to have done, would it not?
A. I guess so.
Q. Tell us what you did do to help them stay in there?
A. I don't know as I had anything to do to make them stay in there.
1478 Q. You helped them, did you not? What did you do to help them to stay in there?
A. For one thing, they had my radio in there, but that radio was in there long before the strike.
I used to keep it for different things, programs that would come along when we were working nights.
Q. All right. Then, we will not count that. What else did you do?
A. (No answer.)
Q. You are not bashful about this, are you?
A. (No answer.)
Q. Tell us, tell us. Let us not take all day.
A. (No answer.)
Q. You helped get food down there, did you not?
A. I helped them at first.
Q. You helped them get bedding down there, did you not?
A. No.
Q. No?
A. I don't recall it.
Q. But you did help get food. You went out and helped to get some money together, did you not?
A. Some.
Q. What did you do with the money after you got it together?
A. I didn't have charge of the holding of the money in my pocket.
1479 Q. What did you do with the money you got together, or helped get together?

A. I don't know who it was turned over to.
Q. Did you collect any of it?
A. No. I was just along.
Q. Who were you with?
A. Oh, at first, there was myself, John Germer—
Q. Yes.
A. —and William Magnus.
Q. To whom was that money turned over, if you know?
A. I don't know.
Q. You do not know.
A. No.
Q. Did you carry any messages back and forth between the men that were inside of their building, and their homes, friends, or families?
A. Yes, I did, that first evening.
Q. All right. Did you shout, or talk any words of encouragement to them?
A. I don't recall that.
Q. You asked them if there was anything you could do to help, did you not, from time to time?
A. I don't know if I did.
Q. What?
A. I don't know whether I said that or not.
1480 Q. Well, you said words of encouragement to that effect, did you not?
A. There were a lot of people out there talking—
Q. Never mind about that. We do not care anything about that. Tell us what you did. Never mind about lots of people.
Q. Did you offer to do anything they wanted to do, or anything to help that you could?
Did you say that to the men, or some such words?
A. I don't remember.
Q. Did anybody ask you to do anything, and did you do the things they asked you to do?
A. There was some little things they might have asked me. I don't know what they are now.
Q. Did you do them?
A. I don't know whether I did or not.
Trial Examiner Dudley: Just a moment, Mr. Keele. I suggest that the witness should give as much information as he can about this. Do not hesitate about revealing anything that happened. Give us everything that you remember.
Mr. Keele: Will you read the last question, Mr. Reporter.
(The question was read.)

A. I have done some little things to help them.
Q. (By Mr. Keele) Did you actually bring anything down there to the plant, such as food or bedding or stoves, or
1481 kerosene, stoves, or anything like that?
A. I brought a kerosene stove.
Q. All right. That went into the plant, did it not?
A. I imagine it did.
Q. Did you see it go in or not?
A. Yes, I saw it go up.
Q. You did not imagine it. You saw it go up, did you not, and go into the plant.
That is right, is it not?
A. Yes.
Q. What else did you bring down there, if anything?
A. I brought a few cigars.
Q. Cigars?
A. Yes.
Q. Anything else?
A. Cigarettes.
Q. Cigarettes?
A. Yes, sir.
Q. Anything else?
A. That is all I recall that I brought in.
Q. That is all that you recall that you brought?
A. Yes.
Q. You knew there was an injunction down there, did you not?
A. I don't remember, after those papers were nailed on the door whether I put up anything or not.
1482 Q. You do not recall whether you did anything to help the boys inside after that?
A. I was out most of the time.
Q. You were in court when the injunction was issued, were you not?
A. Yes.
Q. You were up here in court?
A. Yes.
Q. You were in this very court room when that order was entered, were you not?
A. Yes.
Q. How did you know that there was going to be that hearing that morning?
A. From the papers, I think, if I remember right, and from general talks.

Q. There was nothing in the paper about it in advance, was there?

A. I don't know whether there was or not.

Q. Were you down at the plant when notice was given the boys by Mr. Swiren that there was going to be a court hearing the next morning?

A. (No answer.)

Q. Were you there at the time of the gas attacks, either of them?

A. Yes.

1483 Q. That was 5:00 o'clock in the morning, both times. What were you doing around there then? Were you just curious?

A. I just came down—

Mr. Walsh: I object to this entire line of questioning. I cannot see that it has any bearing on any of the issues which are involved here.

Mr. Swiren: You do not think that the aiding and abetting of this witness, in violation of the injunction, of the retention and unlawful possession of the plant has anything to do with it?

Trial Examiner Dudley: The answer states he was discharged because of participation.

Mr. Swiren: That was one of the bases. There are others. That is the main basis.

Mr. Keele: That is what I am trying to show, is the aiding and abetting, but as you can see, it is an awfully slow job. It is very difficult, I grant.

Trial Examiner Dudley: I think the witness testified more fully before when he was on the stand.

1484 Mr. Keele: I cannot keep straight what he testified to before. I thought he testified to the conversation with Mr. Anselm, and I do not recall much more.

Trial Examiner Dudley: I do not remember exactly myself.

Mr. Keele: He may have been called in the other case. I have only one or two questions.

Trial Examiner Dudley: Very well. Proceed.

Q. (By Mr. Keele) Now, Mr. Fagan, during the time that you were doing what you could or what you did do to assist the men who were inside to stay there, did you work with Mr. Germer at any time along those lines?

A. Yes, a little.

Q. You did?

A. Along what lines?

Q. I mean, along the lines of trying to assist the men to stay in the buildings.

A. Yes.

Q. What did you do with him? I mean, what did you do along that line? You brought down food, did you not, with Germer?

A. I don't remember bringing any food.

Q. What did you do with Germer?

A. I was just aiding him, like I told you.

Q. What do you mean "aiding"?

A. Aiding in getting some money.

Q. Did you do anything else besides get money?

1485 A. No.

Q. Do you remember how clear your memory was about the date upon which you had a conversation with Mr. Anselm, away back in September, yesterday when you testified?

A. Sure.

Q. All right. Now, can you not remember just as clearly what happened only three months ago?

A. I couldn't remember all of that.

Q. Well, try to help us along. It is getting pretty late. Did you work with Magness? You said you worked with Magness, to assist these strikers, did you not?

A. Yes.

Q. What did you do with Magness?

A. The same thing.

Q. Did you go out collecting money?

A. Yes.

Q. Anything else?

A. That is all I recall right now.

Q. Were you present when Magness helped bring any food down there, and sent any food in to the men?

A. Not that I remember.

Q. What about Puntarvich, Bartow Puntarvich? You know him, do you not?

A. I know him.

Q. Yes. Did you work with him?

1486 A. I never did anything with him. I never had anything to do with him.

Q. You did not. That is all you can tell us about what you did to assist him?

A. That is about all that I can remember.
Q. What about Hoff or Huff? Did you do any work with him?
A. Who?
Q. Hoff or Huff?
A. No.
Q. Charley Fulkerson?
A. No.
Q. Charley Fulkerson, Jr.?
A. No.
Q. Harry Rayner?
A. No.
Q. Starovich?
A. No.
Q. You rode in Magness' car, did you not?
A. Yes.
Q. When Magness was bringing food down there?
A. I don't remember of having any food in the car.
Q. You went around with Magness in his car when you were soliciting money, did you not?
A. The only time I had food in Magness' car is after the eviction.
1487 Q. Yes.
A. We were getting food for our own kitchen, for ourselves.
Q. For whose kitchen?
A. For our—what was to be our little meeting place, where we hung around.
Mr. Keele: I think that is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Trial Examiner Dudley: We will adjourn at this time until nine-thirty tomorrow morning.
(Thereupon, at 5:20 o'clock p. m., June 16th, 1937 the hearing of the above entitled matter was adjourned until Thursday, June 17th, 1937, at 9:00 o'clock a. m.)

1492 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Thursday, June 17th, 1937.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

1493 PROCEEDINGS.

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: The first witness I wish to call is Joe Petraitis. Is Joe Petraitis here?

(No response.)

Mr. Walsh: I will recall Mr. Hendee.

EUGENE D. HENDEE, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Eugene Hendee?
A. Yes, sir.
Q. You were sworn yesterday, and testified in this proceeding.
A. Yes, sir.
Q. We asked you to verify how much money you had earned between February 26th, 1937, and the present time.
A. Yes, sir.
Q. You have checked up on that amount, have you?
A. Yes, sir.
Q. And that amount is $182—
A. No.
Q. No—
A. At the bottom there, that is the Social Security.
Q. Just a moment. That amount is $180.58; is that correct?
1494 A. Yes, sir.
Mr. Walsh: That is all.
Mr. Keele: No questions.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Is Joe Petraitis here now?
Mr. Collins: No.
Mr. Walsh: Phil Graimer.

PHIL GRAIMER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Phil Graimer?
The Witness: Right.
Mr. Collins: Will you spell your last named for the reporter, please, Mr. Graimer.
The Witness: G-r-a-i-m-e-r.
Mr. Collins: Have you been served with a subpoena, to appear before the Examiner here?
The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, I would like to claim his constitutional privilege against self-incrimination, under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

1495 Q. (By Mr. Walsh.) What is your address?

A. 1424 Lincoln; North Chicago, Illinois.

Q. How long have you been employed by the Fansteel Metallurgical Corporation?

A. 18 years.

Q. What was your job?

A. Grinder.

Q. In what department?

A. Department 3, Contact Department.

Q. When did you join the union?

A. In August.

Q. 1936?

A. Right.

Q. Did the plant operate between February the 17th and February the 26th, 1937?

A. Well now, that I don't know, but it must have been, as I understand it.

Q. Were you in the plant?

A. Yes, sir.

Q. Were you one of the men who stayed in the plant between February the 17th and February the 26th?

A. Yes, sir.

Q. Then there was not any productive work going on in the plant, was there?

A. No, sir.

1496 Q. When did you draw your last pay?

A. February 26th.

Q. Did the company take up your pass at that time?

A. Yes, sir.

Q. Did you talk to anybody about going back to work?

A. No, sir.

Q. Did anybody offer to reinstate you to your job?

A. No, sir.

Q. And you have never been offered re-employment since that time?

A. No, sir.

Q. What was your hourly rate of pay?
A. I was getting 55 cents per hour.
Q. How many hours per week did you work?
A. 40.
Q. What was your weekly pay?
A. Well, around $25 or $27.
Q. Between $25 and $27?
A. Yes, sir.
Q. How much have you earned since February 26th?
A. About $98.
Q. What did you do to earn that money?
A. Trucking.
Q. Driving a truck?
A. Yes, sir.
1497 Q. Do you normally work outside, when you are employed at Fansteel?
A. No, sir.
Q. Are you one of the respondents in the contempt case—
A. Yes.
Q. (Continuing)—and one of the defendants in the injunction case?
A. Yes, sir.
Q. When the work stopped on February the 17th, did the management ask you to stop work there?
A. No, sir.
Q. The stoppage of work was caused by the men taking over the buildings, was it?
A. Yes, sir.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) Have you made any application for reinstatement?
A. No, sir.
Q. You were not in the buildings, were you?
A. Yes, sir.
Q. Oh, you were?
A. Yes, sir.
Q. What building were you in?
A. 3.
1498 Q. Building 3?
A. Yes, sir.

Q. And you were there from February 17th until February the 26th, inclusive?
A. Yes, sir.
Q. You went in when the other men went in, did you?
A. Yes, sir.
Q. And you stayed in there with them.
A. Right.
Q. And came out when they came out?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all; thank you very much.
(Witness excused.)
Mr. Walsh. John Cudith. This witness has not been sworn, if the Examiner please.

JOHN CUDITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is John Cudith?
The Witness: Yes, sir.
Mr. Collins: Spell your last name for the reporter.
The Witness: C-u-d-i-t-h.
Mr. Collins: You were just served with a subpoena, to appear before the Examiner here, were you?
1499 The Witness: Yes, sir.
Mr. Collins: If the Examiner please, I would like to claim the witness' privilege under Section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. 3045 North Kimball.
Q. How long were you employed by Fansteel?
A. Since November 17th, up to the strike.
Q. November 17th of—
A. 1936.
Q. What was your job?
A. Header-man.
Q. Header-man?

A. Yes, sir.
Trial Examiner Dudley: What department?
Q. (By Mr. Walsh.) What department was that in?
A. I don't remember the department.
Q. Well, what did you do; head up contact points?
A. I headed up contact points, yes, sir.
Q. When did you join the union?
A. About a month after I was employed there.
Q. That would be about December of 1936?
A. Yes, sir.
1500 Q. Did the plant operate between the 17th of February and the 26th of February, 1937?
A. The 17th of what?
Q. Of February.
A. I don't know.
Q. Were you inside the plant during that period?
A. During the strike?
Q. Yes.
A. Yes, sir.
Q. Well, did—
A. No, they didn't operate.
Q. It did not?
A. No.
Q. Nothing was made there during that time?
A. No.
Q. When did you draw your last pay?
A. My last pay?
Q. Yes.
A. I believe two weeks after—a week or two after—
Q. After you got out of there?
A. After we got out of there.
Q. That would be some time in the early part of March, then; is that right?
A. Yes, sir.
Q. Did the company take up your pass at that time?
1501 A. Yes, sir.
Q. Did you talk to anybody about going back to work?
A. No, I didn't.
Q. Or did anybody offer you your job back?
A. No.
Q. What was your hourly rate of pay?
A. 60 cents.
Q. And how many hours per week did you work?
A. I put in eight hours per day.

Q. 40 hours?
A. 40 hours.
Q. What did your weekly pay amount to?
A. $24.
Q. How much have you earned since February 26th?
A. Up until now, you mean?
Q. Yes.
A. Well, about $60.
Q. What did you do to earn that money?
A. WPA.
Q. Normally, when you are working at Fansteel, do you do any work on the outside for pay?
A. No, I don't.
Q. You were one of the men who stayed in the buildings, were you not?
A. Yes, sir.
1502 Q. From February 17th to February 26th?
A. Yes, sir.
Q. And were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. That I don't know.
Q. Well—
A. You see, I wasn't summoned for that trial, and so I don't know.
Q. Did the management ask that the work be stopped on February 17th?
A. The management?
Q. Yes—the boss?
A. Not that I know of.
Q. The stoppage of work was caused by the men taking over the buildings, was it not?
A. That is what I believe.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You did not sign any application?
A. No.
Q. For re-employment, did you?
A. No.
Q. What did you say your weekly rate of pay was? I did not get that?
A. $24.

1503 Q. And your earnings have been what, since February the 26th down to date?
A. About $60. I am not just sure, though.
Q. About $60?
A. Yes, sir.
Q. You were in which building, 3 or 5?
A. 3.
Q. You went in there on the afternoon of February the 17th?
A. Yes.
Q. When the other men went in there.
A. Yes, sir.
Q. And you stayed in there until you left on February the 26th, did you?
A. Yes.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: I will recall Harold Dreyer. This witness has been previously sworn, your Honor.

HAROLD DREYER, recalled as a witness, for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You have been sworn.
1504 A. Yes.
Q. You testified here before.
A. Yes, sir.
Q. What is your address?
A. 323 McKinley.
Q. How long were you employed by Fansteel?
A. Between 9 and 10 years.
Q. What was your job?
A. Why, I was a pieceworker, working on cutting and grinding.
Q. In the Contact Department?
A. Yes, sir.
Q. When did you join the union?
A. I believe it was in July or August?

Q. 1936?
A. Yes, sir.
Q. Did the plant operate between February the 17th and February the 26th?
A. February 17th and 26th?
Q. Yes.
A. No.
Q. When did you draw your last pay from the Fansteel Company?
A. Well now, let me see. I think it was March 5th.
Q. Did the company take up your pass at that time?
1505 A. Yes.
Q. Did you talk to anybody about coming back to work?
A. No.
Q. Have you been offered reinstatement?
A. No.
Q. What was your hourly rate of pay?
A. My day work was 55 cents, and my piecework was more than that.
Q. You earned more than 55 cents on piecework?
A. Yes, sir.
Q. How much did your weekly pay amount to?
A. I made $1400 last year, but I couldn't state how much I did make per week.
Q. It would vary, would it?
A. Yes.
Q. Well, what is your estimate; can you tell me what your half-monthly check in February amounted to?
A. On February 20th I received $102, I believe,—unless it was the pay before.
Q. If it was for that pay, that would be for the period covering the time from the 1st until the 15th of February, 1937—
A. Yes.
Q. Is that right?
A. Right.
1506 Q. How much have you earned since February 26th?
A. $47.50.
Q. What did you do to earn that money?
A. Well, I did a little patching up on houses, on lathing jobs, and so forth.
Q. Normally when you are employed at Fansteel, you have no regular employment outside for pay, have you?

A. No, sir—well, I have worked on Saturdays, on certain occasions once in a while, carpenter jobs, but that is all.

Q. You were one of the men who occupied the buildings, were you not?

A. Yes, sir.

Q. Between February 17th and February 26th.

A. Yes, sir.

Q. And you were one of the respondents in the contempt case,—

A. Yes.

Q. —and one of the defendants in the injunction case, were you not?

A. Yes, sir.

Q. Now, when work stopped on February the 17th, the management did not ask you to quit work, did they?

A. The management?

Q. Yes.

A. No, sir.

Q. The stoppage of work was caused by the men taking over the plant, was it not?

1507 A. Yes, sir.

Q. You have never been offered any re-employment by the company, have you—

A. No.

Q. —since February 26th?

A. No.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You never made application for re-employment, did you, Mr. Dreyer?

A. How?

Q. You never made application for re-employment, did you?

A. At Fansteel?—

Q. Yes.

A. No.

Q. I did not get your rate of pay. What did you say you made during last year?

A. The last year was $1400.

Q. That would be a little over $25 a week, would it not?

A. I never figured it out.

Q. And you said you made $102, or you got $102 in your last paycheck?

A. Yes, sir, but I had more overtime in the last year than I ever had in my life before.

1508 Q. All right. Now, that check for $102 covered the period from February the 1st to February the 15th; is that correct?

A. Well, as I say, I think it was that pay, or the pay before that.

Q. Do you recall what the amount of the check was, before the check for $102?

A. The check before?

Q. Yes.

A. Oh, I don't remember.

Q. Well, was it about that amount?

A. No.

Q. Was it more, or less?

A. It was under, I believe.

Q. Less than that?

A. Yes.

Q. That was a pretty high check—

A. Yes.

Q. —that $102 check, was it not?

A. Yes, sir. it was; that was the highest I had since 1930 or 1931, I believe.

Q. That is what I was getting at.

A. Yes.

Q. Well now, what was the average of your checks, if you can tell us, running back four or five checks before that, say?

1509 A. Well—

Q. Or about the average?

A. Well now, I just couldn't say. We worked so much overtime there that I couldn't say.

Q. Well—

A. They varied, and I couldn't say.

Q. Did it run $80, for two weeks?

A. Yes, there was some $80 checks, some $70, and some $90.

Q. Well, can you not give us some idea of what amount your average weekly pay was for the last three months, let us say, prior to February the 17th?

A. I would say, $45.

Q. $45?

A. $40 to $45.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down; thank you.
(Witness excused.)
Mr. Walsh: If the Examiner please, this man is working, and I would like to have him excused from further attendance at the hearing. If the other side needs him, we will call him.
Trial Examiner Dudley: Very well. Mr. Dreyer, you are excused from further attendance here, and you need not return unless you are notified to do so.
1510 Mr. Walsh: Victor Hertel.

VICTOR HERTEL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Victor Hertel?
The Witness: Yes, sir.
Mr. Collins: Spell your last name for the reporter, please, Mr. Hertel.
The Witness: H-e-r-t-e-l.
Mr. Collins: You have been served with a subpoena, to appear before the Examiner her this morning, have you?
The Witness: Yes, sir.
Mr. Collins: If the Examiner please, I would like to claim for the witness his privilege under Section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. 512 Oak.
Q. Waukegan?
A. Yes, sir.
Q. How long were you employed by Fansteel?
A. Two months.
Q. What was your job?
A. Grinder.
Q. In the Contact Department?
1511 A. Yes, sir.

Q. When did you join the union?
A. December.
Q. 1936?
A. Yes, sir.
Q. Did the plant operate between February the 17th and February the 26th, 1937?
A. No, sir.
Q. When did you draw your last pay?
A. Either the 5th or 6th of March.
Q. Did the company take up your pass at that time?
A. No, they didn't.
Q. Did you talk to anybody about going back to work?
A. No, sir.
Q. Did the company offer you re-employment?
A. No, sir.
Q. What was your hourly rate of pay?
A. 44 cents.
Q. How many hours per week did you work?
A. 40.
Q. What was your weekly pay?
A. Well, I got a little piecework once in a while, and I would say, around $19.
Q. About $19 a week?
A. Yes, sir.
1512 Q. How much have you earned since February 26th, 1937?
A. Around $50.
Mr. Keele: How much?
The Witness: Around $50.
Q. (By Mr. Walsh.) What did you do to earn that money?
A. Driving cars.
Q. Normally, when you were employed at Fansteel, did you do any work on the outside for pay?
A. No, sir.
Q. You were one of the men who occupied by the plant between February the 17th and February the 26th, were you not?
A. Yes, sir.
Q. You were one of the defendants in the injunction case?
A. Yes.
Q. And one of the respondents in the contempt case.
A. Yes, sir.

Q. Now, when the work stopped there on February the 17th, the company did not ask you to stop work, did it?

A. No.

Q. The stoppage of work was caused by the men taking over the buildings; is that right?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You made no application for
1513 re-employment, did you?

A. No, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused; thank you.

(Witness excused.)

Mr. Walsh: Off the record a moment, if the Examiner please.

Trial Examiner Dudley: Off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Walsh: Take this stipulation, please, Mr. Reporter.

It is stipulated and agreed by and between counsel for Fansteel Metallurgical Corporation, and counsel for the National Labor Relations Board, that Stanley Grum was an employee of Fansteel Metallurgical Corporation, employed in the Contact Department; that his average weekly wage was $35 per week; that he was one of the men who occupied the buildings of the company between February the 17th and February the 26th, 1937; that he was a defendant in the injunction case, and a respondent in the contempt case, in the proceedings between Fansteel Metallurgical Corporation and Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America, et al.; that he was cited for contempt in the contempt proceeding; that he is at the present time under quarantine with scarlet fever, and is not available for
1514 the purpose of giving evidence or testifying in this case; and that he did not apply for re-employment.

It is further stipulated and agreed that should a check of the records of the company indicate that his weekly wage was an amount different than $35 per week, it may be so shown in this stipulation.

Trial Examiner Dudley: That is stipulated, is it?

Mr. Keele: Yes, your Honor.

Mr. Walsh: John Grom. We are now going into the second group, if the Examiner please. This witness has not been sworn.

JOHN GROM, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is John Grom?

The Witness: Yes, sir.

Mr. Collins: Spell your last name for the reporter, please.

The Witness: G-r-o-m.

Mr. Collins: Have you been served with a subpoena, to appear here before the Examiner?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like to claim the witness' privilege under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

1515 *Direct Examination.*

Q. (By Mr. Walsh.) What is your address?

A. 1612 Tenth Street, Waukegan.

Q. You will have to speak a little louder, so that we can all hear you.

A. 1612 Tenth Street.

Q. How long were you employed by Fansteel?

A. Three and a half years.

Q. What was your job?

A. Ammonia cracker.

Q. Was that in the Chemical Department?

A. Yes.

Q. When did you join the union?

A. In July.

Q. 1936?

A. Yes, sir.

Q. When did you draw your last pay from the Fansteel Company?

A. Some time in March.

Q. Would that be March 5th?

A. About that, yes.

Q. Did the company take up your pass at that time?

A. Yes.

Q. Now, just before February the 17th, 1937, you were on the night shift, were you not?

A. Yes, sir.
1516 Q. And did you report for work on February 17th?
A. Yes, sir.
Q. To whom did you talk that day, if anybody?
A. The watchman.
Q. What did the watchman tell you?
A. He said that I can't get in tonight.
Q. Did he tell you why you could not get in that night?
A. Yes, sir.
Q. What did he say?
A. I asked him, what is the matter, and he said that there was a strike there.
Q. Now, during the course of that strike, were you around the company's plant?
A. Yes, sir.
Q. Did you work on the picket line?
A. Yes, sir.
Q. When were you on the picket line?
A. Oh, pretty near every day.
Q. Before February the 17th, did you have any talk with your foreman, or with your boss, about being a member of the union?
A. No.
Q. Did you receive any raises during the time that you were working for Fansteel?
A. Yes, sir.
1517 Q. How many?
A. I received two.
Q. When did you get those raises?
A. Well, I got one in July of last year, 1936, and I got one last November; that was a general raise.
Q A general raise.
A. Yes.
Q. Was the July raise a general raise also?
A. Yes—no.
Q. That was not a general raise?
A. No.
Q. What was your hourly rate of pay?
A. 53 cents.
Q. How many hours a week did you work?
A. About 40 hours.
Q. What did your weekly pay amount to?
A. About $21.20.
Q. Have you earned any money since February the 26th, 1937?

A. No.
Mr. Keele: What was the amount of the weekly pay?
Mr. Block: $21.20.
Q. (By Mr. Walsh.) Tell us again, how much was your weekly pay?
A. $21.20.
Q. Were you one of the respondents in the contempt case?
1518 A. No, sir.
Q. And one of the defendants in the injunction case?
A. No.
Q. During the time that you worked for Fansteel, did anybody criticize you about the way you did your work?
A. No, sir.
Q. Have you been offered re-employment since February the 26th?
A. No.
Q. Did you ask anybody to take you back to work?
A. No.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You reported for work, you say, on the night of February the 17th?
A. How is that again, please?
Q. You reported at the plant for work on the night of February the 17th?
A. Yes.
Q. And you found that the buildings were occupied at that time, buildings 3 and 5, by the strikers, did you not?
A. No.
Q. Oh, yes; the buildings were occupied on that night, were they not, by the men?
A. Oh, yes, sure.
1519 Q. All right. What did you do?
A. What is that?
Q. What did you do then, when you got to the plant and found that you could not get in?
A. I went home.
Q. You went home?
A. Yes, sir.
Q. When did you next come to the plant?

A. The next morning.
Q. What did you do then?
A. Well, then I just walked around the fence, that's all, and talked to the men.
Q. You were not supposed to be around there in the daytime, were you?
A. No.
Q. You worked at night.
A. Yes.
Q. And you came there the next morning.
A. Yes.
Q. That was February the 18th?
A. Yes.
Q. And you went to the east side of the plant?
A. Yes.
Q. Outside the fence.
A. Yes.
1520 Q. And you talked to the men, in buildings 3 and 5, did you?
A. Yes, sir.
Q. You encouraged them, did you not?
A. No.
Q. You told them to stick it out, did you not?
A. No, I didn't say anything.
Q. What did you say to them?
A. Nothing.
Q. You talked to them.
A. I just talked to them, that is all.
Q. What did you say?
A. Oh, I don't know what I was talking about now. I had some friends in there, and I talked to them, that is all.
Q. How long did you stay there that day?
A. About two hours.
Q. About two hours.
A. Yes, sir.
Q. That was in the morning.
A. Yes.
Q. Did you come back there again in the afternoon?
A. No, not that day.
Q. Did you come back that night?
A. No.
Q. Were you there the next day?
A. Yes.

1521 Q. The 19th.
A. Yes, sir.
Q. When did you come there the next day?
A. In the morning.
Q. And how long did you stay there that morning?
A. Oh, about three or four hours.
Q. All right. And what were you doing there during those three or four hours?
A. Just walking around.
Q. Just walking around.
A. Yes, sir.
Q. Did you come back that afternoon?
A. No.
Q. Or that night?
A. No, sir.
Q. As a matter of fact you were there practically every day, were you not, while the men were in the building?
A. Yes.
Q. You were outside of the fence there?
A. Yes.
Q. Did you bring any food down there?
A. No.
Q. Did you bring any supplies of any kind down there?
A. No.
Q. For the men inside the buildings.
1522 A. No, sir.
Q. Did you solicit any money?
A. No.
Q. You did not do anything to help those men?
A. No, sir.
Q. Are you sure of that?
A. Yes.
Q. As a matter of fact did you not go around with Magness in his car?
A. No.
Q. During that time?
A. No, sir.
Q. You did not do anything of any kind to assist the men who were on the inside?
A. No, sir.
Q. Now, what department were you in?
A. (No answer.)
Q. Where did you work?

A. I don't know what department it was.
Q. Well, what did you do?
A. Ammonia cracker.
Q. How?
A. Ammonia cracker.
Q. Ammonia cracker.
A. Yes, sir.
1523 Q. That was in the furnace building.
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Charles Fulkerson. Will you swear the witness, if the Examiner please.

CHARLES E. FULKERSON, JR., called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Charles E. Fulkerson, Jr.?
The Witness: Yes, sir.
Mr. Collins: Spell your last name for the reporter, please.
The Witness: F-u-l-k-e-r-s-o-n.
Mr. Collins: Have you been served with a subpoena, to appear before the Examiner here this morning?
The Witness: Yes, sir.
Mr. Collins: If the Examiner please, I would like to claim for the witness his privilege under Section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
1524 A. 511 Fulton Avenue, Waukegan, Illinois.
Q. Talk up a little louder, so that we can all hear you. How long were you employed by Fansteel?
A. Nearly three months.
Q. What was your job?
A. I worked in the Sintering Department.
Q. What did you do there?

A. Operated electrical furnaces.
Q. When did you join the union?
A. In February, the first of February.
Q. On February the 17th, or just before February the 17th, 1937, were you on the night shift?
A. Yes.
Q. Did you report at the plant for work on February the 17th?
A. No.
Q. When did you report for work?
A. I didn't report for work—I was supposed to go to work on February 18th.
Q. I see. Well, had you worked the night of February 16th, and the morning of February 17th?
A. No.
Q. You had not?
A. No.
Q. Had you been regularly employed?
1525 A. Yes.
Q. Then that was just a layoff; is that right?
A. No.
Q. Well then—
A. I finished work Monday morning.
Q. Go ahead.
A. I finished work Monday morning, and then I was supposed to go to work on Thursday again. I had a three day vacation in there.
Q. Oh, I see. You had three days off in there.
A. Yes, sir.
Q. I see.
A. And the strike occurred Wednesday.
Q. And you were not supposed to start again until Thursday night?
A. Thursday night.
Q. And the strike occurred on Wednesday.
A. Yes, sir.
Q. So you were supposed to report for duty on the 18th of February; is that right?
A. Yes, sir.
Q. Now, why did you not report for duty on the 18th of February?
A. Well, because I knew that there was a strike there, and so I didn't report.

1526 Q. Did you go down to the plant?
A. Yes, sir.
Q. Did you talk with somebody down there?
A. Yes, sir.
Q. To whom did you talk?
A. I talked to my father.
Q. Now, when did you draw your last pay from the company?
A. I think it was the 20th of February.
Q. That was the regular pay day, was it?
A. Yes, sir.
Q. What was your hourly rate of pay?
A. 44 cents per hour.
Q. How many hours per week?
A. 40.
Q. What did your weekly pay amount to?
A. $17.60.
Q. At the time you drew your last check, did the company take up your pass?
A. No.
Q. Has the company ever taken up your pass?
A. No.
Q. Since the 26th of February, have you been offered re-employment?
A. No.
Q. Did you take part in the strike that was on the
1527 plant of the company?
A. I wasn't in the buildings, no.
Q. Did you do anything on the outside?
A. Well, I helped my father.
Q. What did you do to help your father?
A. Why, I gave him my coat, and blankets, and things like that.
Q. Did you work on the picket line?
A. No.
Q. Were you one of the respondents in the contempt case?
A. I don't think so.
Q. Or one of the defendants in the injunction case?
A. I don't believe so.
Q. Did you apply for re-employment after the plant opened?
A. No.
Q. And nobody offered to take you back on your job, did they?

A. No.
Q. What have you earned since February 26th, 1937?
A. $29.
Q. What did you do to earn that money?
A. I worked in another plant.
Q. In what plant did you work.
A. Abbott.
Q. What did you do over there?
1528 A. I worked in the returned goods department.
Q. Normally, when you were employed at Fansteel, did you do any work on the outside for pay?
A. No, sir.
Q. During the time that you were employed by Fansteel, did you get any raises?
A. No.
Q. Did anybody criticize your work?
A. No, sir.
Q. Did you discuss the fact that you were a member of this union, with your boss, or with your foreman?
A. No, sir, I didn't; I never seen my boss once or twice, but I discussed it with the other fellows I worked with.
Mr. Keele: We cannot hear.
Mr. Walsh: Speak a little louder.
The Witness: I say, I only seen my boss once or twice, because he worked days and I worked nights; but I discussed it with the other fellows that I worked with.
Q. (By Mr. Walsh) You made no secret of the fact that you were a member of the union, did you?
A. No, sir.

Cross-Examination.

Q. (By Mr. Keele) You say you helped your father while he was within the buildings, inside of the buildings, dur-
1529 ing this period from February the 17th to February the 26th, did you?
A. Yes, sir.
Q. You brought him a coat?
A. Yes, sir, I brought him a coat, and also a blanket.
Q. Anything else?
A. That's all that I can remember.
Q. Did you assist in connection with food being sent into the buildings?
A. No, sir.

Q. Did you bring anything at all in there, besides the coat and the blankets?

A. I believe I brought him some gloves; just things to keep him warm.

Q. Had he told you what he wanted, and instructed you to go and get them?

A. No, sir, he told me he didn't need anything, but I brought them anyway.

Q. And that is all you did—

A. Yes, sir.

Q. —to help your father?

A. Yes, sir.

Q. You were over there every day, were you not?

A. No.

Q. How long were you there?

A. I was there three times only, I believe, while they
1530 was in the buildings.

Q. Only three times.

A. Yes, sir.

Q. You had only been working at the plant a few months, had you not?

A. I don't recall now just exactly, but I think it was a little longer that that. That is—

Q. Well, when did you go to work?

A. I don't remember exactly.

Q. Well, about when?

A. I can't remember. It was either before December, or after December, but I don't just recall now.

Q. Well, might it have been in December?

A. Well, it could have been, yes, sir, but I don't know; I don't remember now.

Q. Well, you had not been working there more than three months, had you?

A. No.

Q. Not over three months.

A. No, sir

Q. Had you ever done anything to indicate to any of the foremen, or any of the members of the management around there, that you were a member of the union?

A. Well, I never seen them, only to get my check, and I don't know who I got my check from.

1531 Q. You worked at night?

A. Yes, sir.

Q. When the foreman were not there, and when the officers of the company were not there?

A. That is right.

Q. And you never discussed with any of them, the fact that you were a member of the union, did you?

A. No.

Q. And as a matter of fact, you rarely saw any members of the union at work there, did you?

A. Well, I don't know who was in the union.

Q. Well, how many men were there, when you were there at night?

A. Oh, let me see. There might have been six men—or seven men. I don't remember exactly.

Q. You were not on any committee of the union, were you?

A. No, sir.

Q. Did you go to any of the meetings of the union?

A. You mean, before the strike?

Q. Yes.

A. No.

Q. You did not go to any of the meetings of the union at all?

A. No.

1532 Q. You took no active part whatever in the affairs of the union?

A. No, not in the meetings.

Q. Did you do anything else that was in the nature of active participation, other than being a member?

A. Not active, no.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Mr. Magness.

Trial Examiner Dudley: Have you been sworn?

Mr. Magness: No.

WILLIAM B. MAGNESS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: State your name, please.

The Witness: William B. Magness.

Mr. Collins: Will you spell your last name for the reporter, please.

The Witness: M-a-g-n-e-s-s.

Mr. Collins: Have you received a subpoena to appear before the Examiner here this morning?

The Witness: Yes.

Mr. Collins: If the Examiner please, I would like to
1533 claim the witness' privilege, under Section 11, Paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh) What is your address?

A. I live at 126 Wisconsin Avenue, Waukegan, Illinois.

Q. How long were you employed by Fansteel.

A. Around 16 or 17 years; I don't remember exactly just which.

Q. What was your job?

A. I was operating a contact cutting machine.

Q. When did you join the union?

A. I joined the union in July, 1936.

Q. What was your hourly rate of pay?

A. 55 cents per hour, but I worked on piece work most of the time.

Q. And how much did your weekly pay amount to?

A. Between $30 and $35 on piece work, as best I can figure it.

Q. If you worked on a straight hourly rate basis, would you work 40 hours a week?

A. Yes.

Q. Now, how much money have you earned since February the 26th, 1937?

A. Around $80.

Q. And what did you do to earn that money?

1534 A. Well, I done some gardening work in Lake Forest.

Q. Normally, when you were employed by Fansteel, did you do any work on the outside for pay?

A. No.

Q. You were not one of the men who occupied the buildings during the strike period, were you?

A. I was not.

Q. Now, on February the 17th, 1937 you were employed on the night shift, were you not?

A. I was.

Q. Did you report for work on that day?
A. I did, at ten minutes to four.
Q. Did you go to work on that day?
A. I did not.
Q. To whom did you talk, if anybody?
A. I talked to the watchman at the gate, and he told me that they was not letting anybody in the fence, but that I would be notified when to report back.
Q. When to report to work?
A. Yes, sir.
Q. Now, during the time that you have been employed by Fansteel, have you had raises from time to time?
A. Oh, yes, in the last—well, in about six months, the last six months, I think there was a couple of raises there.
Q. You participated in the general raise, I take it?
1535 A. Yes.
Q. That happened along in the fall; is that right?
A. Around the 5th of November, I think it was,—or December; I don't recollect just exactly which.
Q. During the time that you worked there, say in the last six months, did you have any criticism of your work?
A. I did not.
Q. Did you ever discuss the fact that you were a member of the union, with your foreman, or your boss?
A. Well, I didn't discuss anything with my boss, no, sir, pertaining to that; but I did with the boys around the shop, and if he happened to be around, why, of course, we were talking about it?
Q. So he knew that you were a member of the union, did he?
A. Well, I suppose he did, although I can't say for sure.
Q. During the progress of this strike, did you take any part in it?
A. How do you mean?
Q. Well, what did you do, if anything? Did you help the men who were in the buildings?
A. I did.
Q. Did you put any food in there?
A. I did.
Q. Did you solicit money?
A. Yes.
1536 Q. To get supplies for the men who were in the buildings?
A. I did.

Q. Did you work on the picket line?
A. I did.
Q. Were you one of the respondents in the contempt case?
A. No.
Q. One of the defendants in the injunction case?
A. Not to my knowledge.
Q. Has anybody offered you reemployment since February the 26th, 1937?
A. No, sir.
Q. Did you make any application for reemployment?
A. I did not.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) How often were you down to the Fansteel property during the period from February 17th to February 26th?
A. I was there every day.
Q. Were you in court on the morning of February the 18th, when the injunction proceeding was had?
A. I was.
Q. And you heard Judge Dady, in this court room, enter an injunctional order, did you not?
A. No, sir, I didn't hear him. I couldn't hear him; I really couldn't hear anything that they said.
1537 Q. Where were you?
A. I was sitting right over there on the east side of the court room.
Q. You are able to hear me now, are you not?
A. How is that?
Q. You are able to hear me now?
A. I can.
Q. Speaking in a normal tone of voice?
A. I can.
Q. And you heard the discussion that morning between the lawyers, did you not?
A. I heard them discussing something there, yes, sir.
Q. And you knew that the court entered that order that morning, did you not?
A. I knew it the next morning; the injunction was served the next morning, on the 19th.
Q. Well, as a matter of fact the sheriff went out there that afternoon and served that injunction, did he not?

A. I didn't know that.
Q. Well, you did know that it was served, the next morning?
A. I did.
Q. And after that, you knew the sheriff made an attempt the next morning to get the men out, did you not?
A. Yes.
Q. Were you there at that time?
1538 A. Yes.
Q. How did you happen to be out there at that hour of the morning?
A. I went down there to take some food in to the men that morning, and I was there about 6:00 o'clock; it was about 6:00 o'clock when I got down there, or 6:15, I think it was.
A. All right. And that was in spite of the fact that you knew there was an injunctional order issued—
A. I didn't know there was an injunction.
Q. Just a moment.
A. Not at that time.
Q. You said you learned it the next morning?
A. On the 19th.
Q. And after that you helped get food in to the men, did you not?
A. I did not.
Q. You did not?
A. Not after that, I didn't help get no food in there, but I did take bedding and clothing down to the boys down there.
Q. Well, you helped furnish supplies?
A. I did.
Q. So that they could stay in the buildings?
A. I did.
Q. And you knew at that time that there was an
1539 injunctional order of court, ordering them to vacate those buildings, did you not?
A. I did.
Q. And in spite of that fact, you went right ahead and helped them to stay in there, in defiance of that court order, did you not?
A. I brought stuff down there—
Q. I say, you helped them stay in there?
A. I brought it down.
Q. For the purpose of helping them?
A. For the purpose of letting them have bedding, or clothing,—whatever it was.

Q. Well, I say, you did it to help them, did you not, so that they could stay in there?

A. It was to help them.

Q. You were down there nearly every day, or every day, were you not?

A. I was down there every day, I believe.

Q. Every day.

A. Yes.

Q. All right. And you used your car—

A. Yes.

Q. —in soliciting funds?

A. Yes.

Q. You took men around with you there, did you not?

1540 A. Well, I don't know of anybody that I did take around, only Earl Fagan, the first two days.

Q. Fagan went around with you?

A. Yes, sir.

Q. Anybody else?

A. No, sir, not to my knowledge, although maybe somebody rode back and fourth with me once in awhile; I won't say.

Q. Were you there at the time of the last gas attack?

A. I was.

Q. On the 26th.

A. I was.

Q. Where were you then?

A. I was standing on the outside of the fence.

Q. What were you doing?

A. I was just there doing what I had always been doing, when I was down there; just standing around.

Q. You were just standing around, on the outside of the fence were you?

A. Yes.

Q. You did not move away at all?

A. Oh, yes, I did, sure.

Q. Oh. That was when the gas began to get bad, was it?

A. Well—

Q. You did not go away from there at all that morning, but you stayed right there until the gas drove you away

1541 from there; is that it?

A. Well, I didn't get down there until almost the time when they had the gas attack. I don't remember when I got down there, but it was quite early in the morning.

Q. About 5:00 o'clock, was it not?

A. It was before 5:00 o'clock.
Q. Before?
A. Yes.
Q. What were you taking down to the boys that morning?
A. I was taking nothing down there.
Q. How did you happen to be down there?
A. I just got ready and went down there; I done that every night, I guess, during the strike.
Q. But what about the morning? This was the morning.
A. Well, the morning, then.
Q. Were you doing 24-hour duty down there?
A. I was not doing 24-hour duty there, no, sir, but there was times when I would get up in the night, around 4:00 o'clock in the morning, or 3:00 o'clock in the morning, and go down there.
Q. You were an early riser?
A. Yes.
Q. What did you do down there while you were standing on the outside of the fence, when the attack was going on?
A. I walked around some, or else I walked up to the 1542 restaurant and got me a cup of coffee—
Q. No, no, I do not mean that; I mean at the time of the gas attack.
A. What do you mean?
Q. What were you doing down there at that time, while the gas attack was going on
A. Oh, walking around. I was—well, practically, after it started—I was up to the restaurant and around there, the same as the rest of the people. Most of them was quite a distance away from the shop, on account of the gas, there was so much gas.
Q. Did you go down there every morning at that hour?
A. Well, no, not at that hour. I was there at different times in the morning.
Q. And you just happened to be there that morning at four o'clock, did you?
A. No, I didn't just happen to be there. I went there different times, like I said. I was there that morning, I guess about 2:00 o'clock, and there was times that I would get up and go down there at 1:30, or 2:00 o'clock or various different times.
Q. Were you suffering from insomnia, Mr. Magness?
A. Well, I don't think I slept very much during that period.

Q. I see. I do not think you did either, if you were down there in the morning at that time.

1543 A. No.

Q. Was Fagan with you that morning?

A. Fagan wasn't there.

Q. Was he with you on these other mornings?

A. No, indeed.

Q. You just went down there alone?

A. I went down there alone, yes, sir; Fagan and I were out the last two or three days; we was collecting some money; but Fagan didn't go down there with me at night, or I don't think that he was down there with me after the second day, only when we were out collecting some money.

Q. When you went down there on the morning of the 26th, what time did you get down there, did you say?

A. I don't remember exactly what time it was, but I think it was around 1:30 or 2:00 o'clock; or maybe 2:30, I don't remember.

Q. You just went down there and stayed there until after the gas attack that morning, did you?

A. I went down there several other mornings, and just stayed around there too.

Q. Now, Mr. Magness, we are not interested at the moment in any other morning. Let us talk about this one morning, and supposing you just answer my question.

A. All right, sir.

Q. All right. Now, you say you were down there

1544 about one or two o'clock that morning?

A. Yes.

Q. And you stayed there until after the gas attack?

A. Yes, sir.

Q. All right. Did anybody go down there with you?

A. I really don't just remember whether anybody went with me that morning or not. There were several mornings that—well, I think some women went down there, a couple of women went down there early in the morning, about 6:00 or 7:00 o'clock in the morning; when they went down it was about 6:00 or 7:00 o'clock in the morning.

Q. Did you have any idea that there was going to be a gas attack that morning?

A. I had no idea whatever.

Q. You just happened to be down there?

A. I just happened to be down there, yes, sir.

Q. Did you see anybody you knew down there, when you got down there on the outside of the fence that morning?

A. I don't remember.

Q. It was pretty cool that morning, was it not?

A. Well, no; I don't think that it was so terribly cold that morning, no, sir.

Q. Well, during that period the weather was pretty cool, was it not?

A. It was.

1545 Q. And you were going down there at one or two o'clock in the morning, and standing around there in the cold weather the rest of the night, were you?

A. Oh, sometimes I stayed in my machine—lots of times,—because it was cold.

Q. The men were asleep in the buildings at that time, for the most part, were they?

A. Yes, sir.

Q. Now, you were down there on the 26th, and quite a crowd came there that morning, while you were there, did they not?

A. Well, there wasn't so much of a crowd there that morning, no, sir. I couldn't even estimate how many there were.

Q. They were scattered so, and there were so many of them around there, that it would be pretty hard to estimate how many there were, would it not?

A. I wouldn't say that, no.

Q. You saw a street car come down there and stop, and a whole street carload of people roll off, did you not?

A. I can't say that anybody got out of the street car, no, sir. In fact, I never seen anybody get out of the street car.

Q. The street car just came down there with nobody in it; is that it?

A. There was two of the street cars met there at that time, I think.

1546 Q. And you saw the street car stop with the trolley pole just outside the fence there, and people roll off it, did you not?

A. No, I never did; I never saw anybody get off of the street car.

Q. Were you down there that morning?

A. Yes.

Q. And you did not see that?

A. No.

Q. You did not see anybody throwing things from the outside of the fence, I suppose, either, did you, that morning?
A. I never saw anybody throwing anything from outside the fence that morning; not anything.
Q. You did not have anything to do with that, did you?
A. I am telling you I did not.
Q. But you were down there?
A. Yes.
Q. Outside the fence, all that time?
A. Yes.
Q. And you did not see anybody throwing anything?
A. I was down there and I did not see anybody throwing anything, no, sir.
Q. Did you talk to anybody in the crowd during the time you were down there that morning?
A. That morning?
1547 Q. Yes.
A. I don't remember that I did.
Q. Did you bring anything there for the men that morning?
A. No, I never did.
Q. Did you see Mr. Mills down there that morning?
A. I don't think I did; I don't remember seeing him down there that morning.
Q. Did you see Mr. Adelman down there that morning?
A. I did not.
Q. As a matter of fact, are you sure whether you saw any deputies down there that morning, or not?
A. Yes, I did.
Q. Oh, you can remember that?
A. I saw a few deputies
Q. A few?
A. A few deputies.
Q. Four or five?
A. I didn't know who they were.
Q. I say, four or five deputies?
A. Well, I can't say how many there were.
Q. You did see some gas that morning?
A. Yes.
Q. But you did not see anybody throwing anything?
A. I did not.
Mr. Keele: All right.

1548 *Redirect Examination.*

Q. (By Mr. Walsh.) Mr. Magness, did you see Mr. Keele there that morning?

A. How is that?

Q. Did you see Mr. Keele there that morning?

A. I didn't see Mr. Keele.

Mr. Keele: He did not see anybody.

The Witness: Oh, yes, I did.

Mr. Keele: Let us have his address.

Mr. Walsh: Pardon me?

Mr. Keele: We would like to have his address; let us have his address, please.

The Witness: My address is 126 Wisconsin Avenue, Waukegan, Illinois.

Mr. Keele: Thank you.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: I will recall Mr. W. D. Crump. This witness has already been sworn, if the Examiner please.

W. D. CRUMP, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Crump, I believe you testi-
1549 fied here the other day, did you not?

A. Yes, sir.

Q. You were sworn.

A. Yes, sir.

Q. There was some question as to how much money you had earned between February the 26th and the present time, was there not?

A. I don't believe so.

Q. Did you say how much you had earned?

A. I don't remember whether I did or not.

Trial Examiner Dudley: I do not remember any question about that, Mr. Walsh.

Mr. Walsh: Pardon me?

Trial Examiner Dudley: I do not remember any question about that.

Mr. Walsh: I thought there was some question about it.
Mr. Block: I do not think he said anything about his salary.
The Witness: No.
Q. (By Mr. Walsh.) What was your hourly rate of pay?
A. Well, at the end it was 65 cents.
Q. How many hours a week did you work?
A. Normally, forty hours.
Q. What did your weekly pay amount to?
A. About $26 and some cents.
1550 Q. Now, how much have you earned since February 26th?
A. About $130.
Q. And what did you do to earn that money?
A. Well, I worked here in the court house, and as a gardner; odd jobs.
Q. When you are normally employed by Fansteel, do you do any work on the outside for pay?
A. No.
Mr. Walsh: You may inquire.
Q. (By Trial Examiner Dudley.) What was your hourly rate again; 65 cents?
A. Yes, sir.
Q. And you said that you have earned $130 since February 26th?
A. Approximately.
Trial Examiner Dudley: I think it was the other Crump that you had in mind, Mr. Walsh.
Mr. Walsh: You are W. D. Crump, are you not?
The Witness: Yes.
Trial Examiner Dudley: You had Lester Crump on.
Mr. Walsh: We had Lester Crump on here yesterday. This witness was on once before.
Trial Examiner Dudley: Yes.
Mr. Keele: As a matter of fact he has been on twice before.
1551 The Witness: Yes, I was on twice.
Trial Examiner Dudley: But he did not testify on this phase of the proceeding.
Mr. Walsh: I do not want any repetition, of course. I have no further questions.
Mr. Keele: No questions.
Trial Examiner Dudley: That is all; thank you.
Mr. Keele: Oh, just a moment. I might ask him just one question.

Cross-Examination.

Q. (By Mr. Keele.) Did you make application for re-employment?

A. No, sir, I didn't.

Mr. Keele: That is all.

Trial Examiner Dudley: That is all.

(Witness excused.)

Mr. Walsh: Harry Rayner. This witness has not been sworn, if the Examiner please.

HARRY RAYNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Harry Rayner?

The Witness: Yes, sir.

Mr. Collins: Will you spell your last name for the Reporter, please.

The Witness: R-a-y-n-e-r.

1552 Mr. Collins: Have you been served with a subpoena, to appear before the Examiner here this morning?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like to claim the witness' privilege under section 11, paragraph 3 of the United States Labor Relations Act.

Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 1727 South Park Avenue, North Chicago, Illinois.

Q. How long have you been employed by Fansteel?

A. Four years.

Q. I believe during that period of four years you were off for about 9 months; is that correct?

A. I was off for about 9 months during that time, yes, sir.

Q. What department were you employed in?

A. The tool room.

Q. What was your job?

A. Tool and dye-maker.

Q. What was your hourly rate of pay?

A. 90 cents.

Q. How many hours a week did you work?
A. 40 hours.
Q. What did your weekly pay check amount to?
A. Well, at that rate, it amounted to $36, but I
1553 always got a day or so in of overtime, during the week, —or during the two weeks.
Q. During the two weeks' period?
A. Yes, sir. It would run about $79 for two weeks.
Q. By "two weeks" you mean—
A. Half a month.
Q. —half a month.
A. Yes, sir.
Q. When did you draw your last pay from the company?
A. March 5th.
Q. And did the company take up your pass at that time?
A. No, sir. I lost it.
Q. Did you talk to anybody about returning to work?
A. No, sir.
Q. Were you offered reemployment of any kind by the company?
A. Not directly, no.
Q. Well, did some person connected with the company, talk to you about coming back to work?
A. Yes.
Q. Who?
A. Jay Bisbee.
Q. What is Mr. Bisbee's position with the company?
A. Well, I guess he is kind of a straw boss.
Q. What did he say to you, and what did you say to him?
1554 A. Well, he didn't talk to me. He come to see me, but I wasn't home, so he talked to my wife.
Q. Were you one of the men who occupied the buildings from February 17th to February the 26th?
A. No, sir.
Q. You were present in the building, I believe, at the time the trouble broke out, were you not?
A. Yes, sir.
Q. That was on February the 17th?
A. Yes, sir.
Q. What time did you leave the building on that afternoon?
A. About an hour afterwards.

Q. Were you one of the respondents in the contempt case—

A. No.

Q. —or one of the defendants in the injunction case?

A. No, sir.

Q. At the time when the buildings—or rather, at the time that the work stopped there, did the management ask that the work be stopped?

A. I didn't get that.

Q. I say, when the work stopped there on February the 17th, the management did not tell the men to quit work, did it?

A. No.

Q. The stoppage was caused because the men took over the buildings; is that right?

1555 A. Because the power was shut off.

Q. Well, the men took the buildings over, did they not?

A. Yes, sir.

Q. Now, during the progress of the strike there, did you do anything down there?

A. No, sir.

Q. Did you work on the picket line?

A. Well, I was on the picket line toward the last, yes, sir, for a little bit.

Q. When were you on the picket line?

A. Oh, for about the last two weeks, I guess, I was out on the picket line.

Q. That would be sometime in April, I believe?

A. Yes, sir.

Q. Now, during the time that you worked there, did you ever discuss the fact that you were a member of this union, with your superior, your boss?

A. No, sir.

Q. Were you an officer of the union?

A. No, sir.

Q. Were you on the Bargaining Committee, or the Negotiating Committee of the union?

A. No, sir.

Q. During the progress of the strike, did you supply the men with any food or clothing?

1556 A. No, sir.

Q. During the time you worked there, did you have any criticisms made of your work?

A. No, sir.
Q. Did you get any raises during that period of time?
A. How is that?
Q. Did you get any raises in your wages—
A. Yes.
Q. —during the time you worked there?
A. Yes, sir.
Q. How many raises did you get, and what were they in amount?
A. Well, when I started four years ago, I started at 50 cents per hour.
Q. Yes.
A. And then I got a nickel raise just after the general raise of a nickel. That was just after—or just before November. Then, there was another nickel raise.
Q. When was that?
A. I couldn't say exactly, but I think that was in January.
Q. 1936?
A. Yes—no, 1937.
Q. 1937?
A. Yes, sir; although I couldn't say just what time.
Q. But you started out at 50 cents per hour?
1557 A. Yes.
Q. Four years ago.
A. Yes.
Q. And when the trouble broke out, you were drawing 90 cents per hour; is that right?
A. Yes.
Q. How much money have you made since February 27th —or 26th?
A. About $85.
Q. What did you do to earn that money?
A. I was working up in Racine, for the Christian Manufacturing Company.
Q. The Christian Manufacturing Company?
A. Yes.
Q. Normally when you are employed by Fansteel, do you do any work on the outside for pay?
A. No, sir.
Q. You were active in the work of this union, were you not, prior to the strike?
A. After the strike.
Q. After the strike.
A. Yes.

Q. Were you active before the strike?
A. No.
Q. But after the strike, you have been active in it, have
1558 A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You say you left the building about an hour after the men took it over?
A. Yes, sir.
Q. What building were you in?
A. I worked in No. 3.
Q. What building were you in—after the men seized the building, did you stay in building 3, or in building 5?
A. I stayed in building 3, yes, sir, until I left.
Q. You were in sympathy with the men, were you not, in taking over those buildings?
A. Well, I couldn't be otherwise.
Q. All right. Then, why did you leave?
A. On account of my wife's sickness, the sickness of my wife, and her brother in the hospital.
Q. That night you were in Mr. Adelman's office, were you not?
A. No, sir.
Q. You were not?
A. No, sir.
Q. You returned to the plant during the strike, did you?
A. Once in awhile, yes.
Q. Did you do anything to help the men who stayed
1559 in those buildings?
A. No, sir.
Q. You did not do anything?
A. No, sir.
Q. Did you take any food—
A. No.
Q. (Continuing)—or any bedding, or any supplies out there?
A. No, sir.
Q. And you only went out there once or twice during the strike?
A. Oh, I was out there several times.

Q. Several times.
A. Yes.
Q. And you spent several hours out there a number of different times, did you not?
A. No, sir—not a couple of hours; I couldn't say that, no.
Q. You did not?
A. I was not there that length of time, no, sir.
Q. And yet you were in sympathy with the men?
A. Yes.
Q. You say, you could not see how you could be otherwise?
A. Yes.
Q. But you did not do anything to help them stay in there, you say?
A. No—well, I helped the families.
1560 Q. You helped their families?
A. Yes, sir.
Q. In other words, you helped take care of their families, while they were sitting in there?
A. Yes, sir.
Q. And you let them know that, did you not, the men who were in the buildings, at that time, what you were doing?
A. I suppose they did know, yes.
Q. Well, you saw to it that they got word of what you were doing, did you not?
A. Oh, no, I didn't see to it that they got word—no, sir.
Q. You did not say anything about your charitable enterprise then?
A. No.
Q. Did you conceal it?
A. What?
Q. Did you conceal the fact that you were helping those families?
A. No, sir.
Q. But you did not talk to anybody about it?
A. Well, it didn't make no difference. I didn't really tell them that I was helping their families, but I told anybody else. It didn't make no difference who it was; I wasn't ashamed of it.
Q. Did any of the men who were out at the plant,
1561 who were sitting in there, talk to you about it at any time when you were down there, and thank you for your efforts?
A. Oh, yes.
Q. So they did know it, did they not?

A. Yes.

Q. And you did that in order to help those men stay in the plant, did you not?

A. Yes.

Q. And you knew at that time that there was an injunction ordering them out, did you not?

A. Well, no.

Q. You say that you did not know that there was an injunction against them, ordering them out of that plant?

A. Well—

Q. You did not know anything about that?

A. Why, I knew that there was an injunction after it was served on them, yes, sir; a few days after.

Q. You knew it the first day it was served on them, did you not?

A. No, I wasn't around there the first day.

Q. You read the papers, did you not?

A. Yes.

Q. Well, it was in the papers, was it not, that there had been an injunction issued?

A. I suppose so, yes.

1562 Q. All right. And you knew that the sheriff went out there and tried to get them out, did you not, on the morning of the 19th?

A. Yes.

Q. All right. And you knew he went out there with a writ, pursuant to an order, did you not?

A. Well—

Q. The newspaper account carried that story, did it not, in the newspapers?

A. Yes, sir.

Q. So that what you were doing, you knew was helping those men stay in there contrary to the order of the court; that is right, is it not?

A. Why, no, sir, not necessarily. I was looking after their families.

Q. But you did that, you stated, in order to help those men stay in there, so that it would be possible for them to stay in there?

A. No; I saw that their families were taken care of. That is all I did it for.

Q. Yes, and that was to help those fellows while they were in there, was it not?

A. That was helping their families.

Q. You told me just a moment ago that it was to help them, did you not?

1563 A. I told you what?

Q. You told me just a moment ago that it was to help the men stay in there, did you not?

A. Well, it was to take care of their families while they were in there. yes, sir.

Q. Answer my question, please, Mr. Witness. Let us not spar here.

A. All right, sir.

Q. Was it to help those men to stay in there?

A. No.

Q. It was not?

A. No, sir, it was to take care of their families.

Q. I see. You did not want to do anything to help those men stay in there, did you?

A. (No answer.)

Q. You felt that they ought to get out, did you not?

A. Oh, I don't say that, no.

Q. Well, I say, did you? You felt that they ought to go home, did you not?

A. No, sir, I wouldn't say that I felt that they ought to go home.

Q. You did not think they ought to go home, then?

A. No, sir—well, that was up to them, that was their business. If they wanted to stay in there or not, that was their business.

1564 Q. And leave it to others, to take of their families?

A. No—I took care of their families.

Q. And you thought that it was all right for them to leave it to others to take care of their families?

A. As long as they thought so, it was all right with me.

Q. You were willing to do that the rest of your life, were you?

A. Yes, sir.

Q. You were a good Samaritan, in other words?

A. You might call it that.

Q. What did you do to help take care of their families?

A. Oh, I done everything.

Q. Do you mean that in the absence of the husbands, you did everything in the way of their duties?

A. Oh, well, no, I didn't do the husband's duties, no.

Q. Well, tell us what you did.

A. I done what you might say was a Christian duty.
Q. What did you do?
A. Oh, I saw that they had groceries and coal.
Q. What do you mean when you say that you saw they had groceries and coal?
A. I bought them for them.
Q. You bought them.
A. Yes, sir.
Q. And how much money did you spend in buying
1565 groceries and coal?
A. I don't know.
Q. You do not remember that?
A. No.
Q. Well for what families did you buy groceries and coal?
A. How?
Q. For what families did you buy groceries and coal?
A. Right around 48 to 50.
Q. 48 to 50 families?
A. Yes.
Q. Where did you get the money for that?
A. Well, I didn't—all I had to do was to spend the money. It was paid by other people. I didn't worry about that.
Q. I understand that all right.
A. Yes.
Q. But I am asking you where did you get the money from?
Mr. Walsh: I object to that.
A. I didn't get the money—
Mr. Walsh: Just a moment. I object to that as immaterial, and improper cross-examination.
Mr. Keele: I am showing that this man was aiding and abetting, if the Examiner please.
Mr. Walsh: I think you have shown that. But where he got the money from certainly is not material to any of the issues involved in this case.
1566 Trial Examiner Dudley: The witness may answer.
Q. (By Mr. Keele) Where did you get the money from?
A. I didn't get the money. I had all of the stuff that I bought, charged, and other people paid for it; not me.
Q. You had it charged?
A. Yes, sir.
Q. And the stores here were willing to send out quantities of food to 48 families, were they?

A. Yes, sir.
Q. On your say-so?
A. Yes, sir.
Q. At what stores did you buy it?
A. How?
Q. At what stores did you buy it—that food?
A. At different grocery stores.
Q. I understand, but what ones?
A. The Co-ops.
Q. What Co-ops?
A. The two of them.
Q. Well, what are their names, and where are they?
1567 A. Well, one of them was the Finnish Co-op, and the other one was the Waukegan-North Chicago Co-op.
Q. Is there any place else you got supplies?
A. No, sir; I guess they was about the only two; just the two Co-op stores.
Q. You did not buy the coal there, did you?
A. No.
Q. You said a little while ago that you bought them coal.
A. Yes.
Q. Where did you get the coal?
A. I bought all of the coal at the Adams Coal Company.
Q. And in none of those instances did you pay any money for it.
A. No, sir.
Q. You simply charged it?
A. Yes, sir.
Q. To whom did you charge it?
A. I charged it to the C. I. O.
Q. To the C. I. O.?
A. Yes, sir.
Q. Did you get any groceries for yourself on that basis?
A. Yes, sir.
Q. C. I. O.?
A. Yes, sir.
Q. You just went in and charged it to the C. I. O.,
1568 when you got your groceries?
A. Yes, sir.
Q. And your coal?
A. Yes, sir.
Q. You never applied for reemployment, did you?
A. No, sir.
Q. And you had no intention of so doing, did you?

A. How is that?
Q. You had no intention of so doing?
A. No, sir.
Q. You didn't want to work for the Fansteel Company as long as the other men were not there, did you?
A. No.
Q. You did not want to have anything to do with it?
A. No.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Paul Makovec.
This witness has not been sworn, if the examiner please.

PAUL MAKOVEC, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Paul Makovec?
The Witness: Yes, sir.
1569 Mr. Collins: Spell your last name for the reporter, please.
The Witness: M-a-k-o-v-e-c.
Mr. Collins: Have you been served with a subpoena by Mr. Walsh, to appear before the examiner here today?
The Witness: Yes, sir.
Mr. Collins: If the examiner please, I should like to claim the witness' privilege under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.

Direct Examination?

Q. (By Mr. Walsh) What is your address?
A. 932 Prescott.
Q. You will have to talk up louder than that, so that we can all hear you.
A. 932 Prescott.
Q. Waukegan?
A. Yes, sir.
Q. How long were you employed by Fansteel?

A. About 2 months.
Q. In what department?
A. The Wire department.
Trial Examiner Dudley: What department?
A. Wire department.
Q. (By Mr. Walsh) What did you do there?
A. De-plating.
1570 Q. How?
A. De-plating.
Q. A de-plater?
A. Yes, sir.
Q. When did you join the union?
A. That was in March.
Q. 1936?
A. 1937.
Q. March 1937?
A. Yes, sir.
Q. What time in March did you join the union?
A. I can't remember.
Mr. Walsh: If the examiner please, I would like permission to withdraw this witness for the moment.
Trial Examiner Dudley: Very well.
(Witness excused temporarily.)
Trial Examiner Dudley: The answer shows that he was not reinstated because of participation in the violence.
Mr. Walsh: I will check up, and try to put it in in a more orderly way. I might plead that I am mildly surprised. Let us have Otto Latz.

OTTO LATZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Otto Latz?
The Witness: Yes, sir.
1571 Mr. Collins: Spell your last name for the reporter.
The Witness: L-a-t-z.
Mr. Collins: Mr. Latz, were you served with a subpoena to appear before the examiner here this morning?
The Witness: Yes, sir.
Mr. Collins: I would like to claim the witness' privilege against self-incriminatory statements, under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted.

Direct Examination.

Q. (By Mr. Walsh) What is your address?
A. 1114 Park Avenue, North Chicago, Illinois.
Q. How long were you employed by Fansteel?
A. I think about 18 years.
Q. What was your job?
A. Chemical; Tantalum Department.
Q. When did you join the union?
A. I joined the union sometime in November, I think it was, but I am not sure exactly.
Q. When did you get your last pay from the Fansteel Company?
A. I think that was in March, but I am not exactly sure. I don't remember. I was sick for a couple of weeks.
Q. At the time you got your pay, did the company take up your pass?
A. No.
1572 Q. Did you talk to anybody about going back to work?
A. No, I didn't.
Q. Have you been offered reemployment at the company?
A. Well, Gene Presler was over to the house, but I wasn't home at that time; I was out, and I didn't see him.
Q. Did he leave any message for you?
A. No.
Q. You don't know what he was over there for, do you?
A. Yes, he wanted to see me.
Q. I see. What was your hourly rate of pay when you worked there?
A. 72½ cents.
Q. How many hours a week did you work?
A. 40.
Q. What was your weekly pay?
A. About $28.50, or something like that.
Q. How much have you earned since February 26th, 1937?
A. February 1937?
Q. February 26th, 1937?
A. I haven't earned anything.
Q. Pardon me?
A. Nothing.
Q. Nothing?
A. Not anything.

Q. Just prior to the 17th of February 1937 you were
1573 on the night shift, were you not?
A. When?
Q. Were you on the night shift?
A. No.
Q. You were one of the men who stayed in the buildings, were you not.
A. No, sir.
Q. Were you one of the defendants in the injunction proceedings—
A. No.
Q. —and one of the respondents in the contempt case?
A. No, sir.
Q. Did you go to the plant on February 17th, 1937?
A. How was that?
Q. I say, did you go to the plant during the time that the trouble was going on down there?
A. The next morning?
Q. Yes.
A. Yes, I did.
Q. Well, did you work on February 17th?
A. That was the day of the strike?
Q. That was the day the strike broke out.
A. Yes, sir; I worked that day until half past five, I think.
Q. Pardon me?
1574 A. I worked until half past five.
Q. On that day?
A. On that day when the strike started; and then I walked out and went home.
Q. Well, the strike broke out sometime around 2:30 that day, did it not?
A. Yes.
Q. You kept on working, you say, until 5:30?
A. Yes, sir; I kept on working until 5:30, until I could finish up the job that I was working on.
Q. And then you went out of the plant, is that right?
A. Yes, sir.
Q. Did you come back down there to the plant on the next day?
A. Yes, sir; but on the outside.
Q. You were on the outside of the fence, were you?
A. Yes, sir.
Q. Did you take any part in the strike activities that were going on?

A. No, sir.
Q. Did you work on the picket line?
A. No, sir.
Q. During the time you were employed there, did you receive any raises in pay?
A. Yes, sir; two.
Q. What were they?
1575 A. 5 cents per hour.
Q. Each?
A. Yes, sir.
Q. When did you get those?
A. I can't say.
Q. While you worked there, did your foreman ever criticize the way in which you did your work?
A. No, sir; he never did. The foreman always liked me.
Q. Did your foreman know that you belonged to the union?
A. Yes, he did.
Q. Are you an official of the union?
A. No, sir.
Q. Did you take any active part in the work of the union?
A. No, sir.
Q. At the time that the work stopped, on the 17th of February 1937, the management did not tell the men to quit work, did it?
A. You mean, the management of the plant?
Q. Yes. The bosses never told the men to stop work, did they?
A. Not that I know of.
Q. What job were you doing, that you say you finished up after the trouble occurred?
A. I was working on tantalum oxide.
Q. You had some work in progress, did you?
A. Yes, sir; I had to finish filtering.
Q. If you had not stayed to finish the filtering, it
1576 would have spoiled, is that true?
A. Yes, it would have been spoiled, and it was worth a lot of money, so I stayed until half past five—or maybe it was half past six.
Q. So after the men had ceased their work at 2:30, you went right on with your job, did you?
A. Yes, sir.
Q. And finished the run or whatever you had?
A. Yes, sir.

Q. And I understand you to say if you had not finished it, the batch would have been spoiled?

A. Yes, sir. Money would have been lost, and the batch would have been spoiled, too. There wouldn't have been nothing left.

Q. The batch was valuable, was it?

A. Well, the finished product; yes, sir. They tell me it costs $12.50 per pound.

Q. How much?

A. $12.50 per pound.

Q. The finished product?

A. Yes, sir. That is what somebody told me.

Q. That is what they told you?

A. Yes, sir.

Q. And how many pounds were there in the finished product—or would there have been in the finished product of this batch that you were working on at this particular time?

1577 A. Well, I should judge around about 35 or 40 pounds, between 35 and 40 pounds, or something like that.

Q. Did you ever apply for reinstatement?

A. No.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Latz, you know that the company made an effort to get you to come back to work, do you not?

A. (No answer.)

Q. As a matter of fact, you know that is why Presler came over there that day, do you not?

A. I wasn't home at that time.

Q. I understand, but I say, you know that is what he came there for, do you not?

A. Oh, sure, he came after me; but, as I say, I wasn't home.

Q. He came there to see you and get you to go back to work, did he not?

A. But he didn't come back after that.

Q. Well, you knew that the company wanted you to come back to work; you knew that, did you not?

A. I suppose they did.

Q. You did not go down there, to try to go back to work, did you?

A. No, sir; I didn't.

Q. The reason for that was because your brothers
1578 were in the strike and had very strong opinions with reference to the union; that is right, is it not, Mr. Latz?

A. (No answer.)

Q. Is that not the real reason why you did not go down there?

A. Well, I think I will stick with the bunch.

Q. You think you will stick with the bunch?

A. Yes, sir.

Q. But you knew you could go back—and I am not criticizing you. I just say, you knew you could have gotten reemployment; you were, in your own mind, sure that you could have gotten reemployment, were you not?

A. Yes, I think I could.

Mr. Keele: All right.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused; thank you.

(Witness excused.)

Mr. Walsh: Bartol Puntarich. Will you swear the witness, if the examiner please.

BARTOL PUNTARICH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Bartol Puntarich?

The Witness: Yes, sir.

Mr. Collins: How do you spell your first name?

The Witness: B-a-r-t-o-l.

1579 Mr. Collins: And spell your last name also for the reporter, please.

The Witness: P-u-n-t-a-r-i-c-h.

Mr. Collins: Were you served with a subpoena to appear before the examiner here this morning?

The Witness: Yes, sir.

Mr. Collins: If the examiner please, I would like to claim the witness' privilege against self-incrimination, under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Mr. Walsh: If the examiner please, may we have an amendment of the complaint, to show that this man's name was erroneously designated as "Bartol Prutovey."

The Witness: That is the wrong spelling.
Mr. Walsh: The wrong spelling.
The Witness: Yes.
Mr. Walsh: Your name is spelled P-u-n-t-a-r-i-c-h?
The Witness: That is correct.
Mr. Walsh: That is the correct way to spell it?
The Witness: Yes, sir.
Mr. Walsh: All right.
Trial Examiner Dudley: The amendment is granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. My old address was 1303 Park Avenue. My new
1580 address is 1468 Woodward, Waukegan.
Q. How long were you employed by Fansteel?
A. Since May 1922.
Q. What was your job?
A. My last job or my first job?
Q. Your first job.
A. Hydraulic press.
Q. In what department is that?
A. Department 4, chemical.
Q. The Chemical Department?
A. Yes.
Q. When did you join the union?
A. The last part of January 1937.
Q. When did you get your last pay from the company?
A. The 5th of March.
Q. Did the company take up your pass at that time?
A. No, sir; they didn't ask me for it.
Q. When you got your last pay, did you talk to anybody about going back to work?
A. No.
Q. Did anybody offer to take you back to work?
A. No.
Q. How much did you get per hour when you worked there?
A. 60 cents per hour.
Q. How many hours per week did you work?
1581 A. 40.
Q. How much was your weekly pay?
A. Oh, about $24.

Q. How much money have you earned since February 26th 1937?

A. About $15.27.

Q. What did you do to earn that money?

A. I worked on the North Shore track.

Q. When you are working at Fansteel, do you normally do any work on the outside for pay?

A. No.

Q. Are you one of the men who were inside of the plant between February 17th and February 26th, 1937?

A. No; I was outside.

Q. Were you on the night shift?

A. No, on the day shift.

Q. Day shift?

A. Yes, sir.

Q. How did you happen to be on the outside?

A. Well, it happened so, that my wife was sick that week, on Monday night before the 17th, and I told them my wife was sick; and then when the strike broke out, when the trouble broke out, I just say I want to go home, that I am not feeling very well; and that is the way I skipped off.

Q. The committee told you to go home?

A. The committee told me to go home; yes, sir.

1582 Q. What time did you go home that afternoon?

A. About 10 minutes to 3, or a quarter to 3.

Q. And then did you take any active part in the strike, after that?

A. No.

Q. What did you do during the time when the men were in the buildings?

A. Oh, sometimes I go down there and see them, and tell the boys "hello" and so forth.

Q. During the time that you worked there, did you get any raises in pay from the company?

A. Yes, sir. About a few weeks before the strike broke out, there was a general raise, and we got a nickel.

Q. Did you ever have your foreman criticize you for the way you were doing your work, while you were there?

A. Oh, sometimes; yes, if I make some mistakes.

Q. I see. Did your foreman know that you belonged to the union?

A. Yes.

Q. Did you talk over with him the fact that you belonged to the union?

A. No, sir. Just Luther Henry one day, he tells me, "Bortol, I hear the news that you joined the union." Now, how he knew it, I don't know, but I didn't tell him.

Q. When did Luther Henry tell you that?

1583 A. Oh, about a week before.

Q. A week before the strike took place?

A. Yes, sir.

Q. Has the company offered to take you back since you have been out?

A. Nobody called me back.

Q. You do not have any steady job now, do you?

A. No, I ain't got any.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You took a bed down there, did you not, Mr. Puntarich?

A. How?

Q. You took a bed down to the plant, did you not?

A. No, I didn't take no bed; only a blanket.

Q. Only blankets?

A. Yes, sir.

Q. And you took those down for Nick Bankowisch, did you not?

A. Yes, sir.

Q. And he was sitting in there, in the strike?

A. He was sitting in there, in the strike, sure.

Q. Did you take him anything else?

A. Oh, sometimes I bring him some food.

Q. Sometimes you brought him some food?

A. Yes, sir; sure, so that he would have something to eat.

1584 Q. What else did you bring; anything else?

A. A package of cigarettes.

Q. Cigarettes?

A. Or, a carton of cigarettes, I mean.

Q. What else?

A. That's all.

Q. Cigarettes, food, and blankets, is that right?

A. That's all.

Q. Any clothing?

A. No. I don't know what his wife wrapped up in a paper and sent to him. I don't know what was in there. I don't examine it.

Q. You knew that the court had ordered those men to get out of there at that time, did you not?

A. I didn't know anything before midnight that night, when the gas attack was, the last time.

Q. The last time?

A. Yes.

Q. You knew that the sheriff had been down there once before, did you not?

A. Yes, I know, but I was home then, and I just woke up. A friend of mine come and told me that it happened; he heard it over the radio.

Q. Well, you knew that the sheriff had been down there before, on the morning of the 19th, did you not, the
1585 second day after the strike started?

A. Yes.

Q. And he tried to get the men out?

A. Yes.

Q. And you knew that?

A. Yes.

Q. And you knew the court had entered an order directing them to get out of there, did you not?

A. Yes.

Q. Or, you heard about that.

A. I heard about it.

Q. And you took stuff down there in the form of blankets, or bedding, and food, and cigarettes, in order to help Nick Bankowisch, and anybody else who might get them, to stay in there, did you not?

A. Why, sure, so they can win the strike.

Q. Now, what was that conversation that you had with Luther Henry, did you say, about the union?

A. It was one time in the morning.

Q. What was it that he said, and what did you say?

A. Well, it was one time in the morning, early in the morning, as soon as they come in to work.

Q. Well, what was said?

A. Well, he only asked me, "I heard you joined the union", and I say, "Yes."

1586 Q. And what did he say?

A. He said, "You think that's right, do you?" I says, "I guess so", and that's all it was.

Q. That is all he said?

A. That's all there was.

Q. He said, "I heard you joined the union?"

A. Yes.
Q. And you said, "Yes."
A. Yes.
Q. And he said, "Do you think that is right?"?
A. Yes.
Q. And that is all there was to it?
A. That's all he said. I just says, "I guess so, I don't know."
Q. Did any of the foremen ever talk with you about joining the union?
A. No.
Q. You told the trial examiner a moment ago, I believe, that, as far as you knew, you had never discussed that matter with your foreman; is that not right? You said you never talked with the foreman about joining the union.
A. Well, that was the first question he asked me, if I ever talked to him, and I said, yes, that Luther knew that.
Q. And they did not threaten to fire you—
A. No.
1587 Q. —to discharge you, did they?
A. No, sir. I don't know what they was thinking about, but they didn't say nothing.
Q. They gave you a raise?
A. Well, the raise was before.
Q. The raise was before that?
A. Sure.
Q. You did not make any application to the company for reemployment, did you?
A. No.
Q. If they had asked you to come back, you would not have gone back, would you?
A. Well, I would have gone back with the rest of the gang, sure.
Q. But if they just asked you to go back—
A. They don't ask me.
Q. I say, if they did ask you to go back, you would not go, would you?
A. No.
Q. Alone, that is.
A. No, sir. I don't want to have any bad feelings between the boys.
Q. And if part of them were asked to go back, you would not go back to work, would you?
A. What do you mean?

1588 Q. If part of the boys who were on strike were asked to go back, you would not go back?

A. Oh, if most of them go back, maybe I go back, too.

Q. There are 35 or 40 of them back there now, but you are not willing to go back, are you?

A. They aren't over half.

Q. How?

A. That isn't over half.

Q. Not over half?

A. No.

Q. As a matter of fact, you want them all back, before you go, back, do you not?

A. Sure. That is the way I feel about it.

Q. Regardlesss of what connection they may have had with the strike, and regardless of what they did in the strike, you do not want to go back until all of them are back; that is right, is it not?

A. If they all go back, I go; but not to the last one. That is, maybe some of them don't want to go. I don't know.

Q. But you want the opportunity given to all of them to go back, do you not?

A. Yes.

Q. All right.

A. So everybody can go back.

Mr. Keele: That is all.

1589 Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: If the examiner please, may I suggest a short recess at this point?

Trial Examiner Dudley: I will declare a short recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: I will call the hearing to order.

Mr. Walsh: Recall Paul Makovec.

Trial Examiner Dudley: This witness has been sworn, has he not?

Mr. Walsh: Yes, Your Honor; he was the witness I had on and withdrew a few moments ago.

PAUL MAKOVEC, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Makovec, since you were on the stand before you have looked up your application for membership in the union, and found what date you joined, have you not?

A. Yes, sir.

Q. What date?

A. February 21st.

Q. All right. Now, were you one of the men who
1590 occupied the plant of the Fansteel Company?

A. No, sir.

Q. When were you employed there?

A. November 27th.

Q. 1936?

A. Yes, sir.

Q. Did I ask you the job you held?

A. Yes, sir.

Q. When did you get your last pay from the company?

A. March 5th.

Q. Did the company take up your pass at that time?

A. No, sir.

Q. Did you talk to anybody about going back to work there?

A. No, sir.

Q. Did they offer you reemployment?

A. No, sir.

Q. What was your hourly rate of pay?

A. 49 cents.

Q. How many hours per week did you work?

A. 40.

Q. What did your weekly pay amount to?

A. $18.

Q. Now, how much money have you earned since February 26th, 1937?

A. A little over $100.

1591 Q. A little over $100?

A. Yes, sir.

Q. And what did you do to earn that money?

A. (No answer.)
Q. What did you work at?
A. De-plater.
Mr. Walsh: I cannot hear you.
Trial Examiner Dudley: Mr. Walsh, be sure the witness has those dates right.
Mr. Walsh: I will find out.
Trial Examiner Dudley: I think he means he received $100 from the company.
Mr. Walsh: Let us see.
Q. (By Mr. Walsh.) Since you left the Fansteel Company, did you say that you have earned a little over $100?
A. No, that was not since I left Fansteel. That was while I was with the company.
Q. While you were with the Fansteel Company, you earned $100?
A. Yes, sir.
Q. Have you worked at anything since you left the Fansteel Company?
A. On the golf course.
Q. What were you doing; caddying?
A. Yes.
1592 Q. How much money did you earn?
A. About $30.
Q. Did you earn any money since the strike was over, down there?
A. No, sir.
Q. So since the boys came out of the plant, you have only earned $30, is that correct?
A. Yes, sir.
Q. Now, when the trouble broke out down there, where were you?
A. I was down at Fansteel.
Q. Did you stay in the buildings?
A. No.
Q. Did you stay in the buildings there at all after the trouble started?
A. No, sir.
Q. Were you in the buildings when the trouble started?
A. No, sir.
Q. Where were you?
A. Outside the fence.
Q. Were you on the night shift?
A. Yes, sir.

Q. What time did you report for work on the 17th of February?

A. I was just walking around--

Q. I cannot hear you.

1593 Trial Examiner Dudley: Speak a little louder, please.

Mr. Walsh: Talk up good and loud so John Kondrath can hear you back there.

A. I was going down Tenth Street that day, going to work, and I got as far as Tenth Street and McAllister, and I met a man going home, and he said, "There is no use going down there, because there is a strike going on. Let's go home."

Q. Did you go home?

A. Yes, sir.

Q. When did you next come down to the plant?

A. I don't remember.

Q. Did you go down there the next day?

A. Yes.

Q. Did you help get any food, bedding, clothing, or cigarettes in to the men?

A. Yes, sir; I got some cigarettes in, and some flashlight cells.

Q. While the boys were in the buildings, did you hang around the plant from time to time?

A. Oh, I went down there to see them for about 2 hours, for maybe three days.

Q. Three days?

A. Yes, sir.

Q. After the boys got out of the plant, did you go on the picket line?

1594 A. Yes, sir.

Q. How many days were you on the picket line?

A. Four days.

Q. While you were working at Fansteel, did you have any raises while you were there?

A. Yes, sir.

Q. How many?

A. Two.

Q. When did you get them?

A. Every two weeks.

Q. Every two weeks?

A. Well, now, not every two weeks: that is, I mean—

Q. You mean that you got paid every two weeks?

A. Yes, sir.

Q. Well, did you receive a raise in November of a nickel?
A. 4 cents.
Q. 4 cents?
A. Yes, sir.
Q. And then did you get another raise while you were there?
A. A nickel.
Q. Another raise of a nickel?
A. Yes, sir.
Q. So you had two raises; one raise of 4 cents—
A. Yes.
Q. —and one of 5 cents?
1595 A. Yes, sir.
Q. Did anybody ever criticize you while you were working there, because of the way in which you did your work?
A. No, sir.
Q. Who was your foreman?
A. Schardt.
Q. Schardt?
A. Yes, sir.
Q. Now, you did not sign up in the union until after the strike was going on, did you?
A. Yes, sir.
Q. How?
A. No, sir.
Q. The strike was on when you signed up with the union; that is right, is it not?
A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You say that you joined the union during the time the strike was going on?
A. Yes, sir.
Q. As a matter of fact, you joined the union on the 21st of February, did you not?
A. Yes, sir.
Q. The strike had been in progress 4 or 5 days?
1596 A. Yes.
Q. It started on the 17th: that is correct, is it not?
A. Yes.
Q. And you had not reported back for work between the 17th and the 21st of February, the day you joined the union, had you?

A. That is right.
Q. Did you ever ask for reinstatement?
A. No.
Q. Nor make application for reemployment?
A. No.
Q. And you did not want to go back, as long as the other boys were out; that is right, is it not?
A. That is right.
Q. Some of the boys have gone back to work, who were in that strike, have they not?
A. Yes.
Q. But you still are unwilling to go back to work as conditions stand now, are you not?
A. No.
Q. What?
A. No, I am not unwilling to go back to work.
Q. Do you mean that you now stand ready to go back to work?
A. I will stay out until all of the rest come in.
Q. You are going to stay out until all of the rest come in?
1597 A. Yes, sir.
Q. Regardless of what the conditions were that prompted their dismissal?
A. Right.
Q. That is right, is it not?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Mr. Keele: Pardon me. I did not get what he said he was making.
Trial Examiner Dudley: 49 cents an hour.

Redirect Examination.

Q. (By Mr. Walsh. What were you making?
A. 49 cents.
Q. And your weekly pay was what?
A. $18.
Mr. Keele: All right. That is all.
Trial Examiner Dudley: You are excused. Thank you.
(Witness excused.)
Mr. Walsh: Mike Zelenick.
Will you swear this witness, if the examiner please.

MIKE ZELENICK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. Walsh.) I gave you a subpoena, did I not?
1598 A. Yes.

Mr. Walsh: If the examiner please, my co-counsel is not present just at the moment, but if the other side has no objection, I will claim the witness' privilege for him.

Mr. Keele: That is all right.

Trial Examiner Dudley: The witness is granted the privilege.

Q. (By Mr. Walsh.) Your name is Mike Zelenick?
A. Yes, sir.
Q. Where do you live, Mike?
A. 1022 Woodward, North Chicago.
Q. How long were you employed by Fansteel?
A. Between 16 and 17.
Q. Years?
A. Yes.
Q. What was your job?
A. In the chemical; washing tantalum powder.
Q. What?
A. Washing tantalum powder.
Q. Washing tantalum powder?
A. Yes, sir.
Q. When did you join the union?
A. August 1936.
Q. When did you draw your last pay from the company?
A. March 5th.
1599 Q. Did the company take up your pass at that time?
A. Well, they asked me for it, but I had lost it before.
Q. Did you talk to anybody about going back to work at that time?
A. No.
Q. Did anybody offer to take you back?
A. No.
Q. How much was your hourly rate of pay?
A. 60 cents.
Q. And you worked 40 hours per week, did you?
A. Yes, sir.
Q. How much did you earn per week?

A. 24.
Q. $24?
A. Yes, sir.
Q. How much money have you earned since February 26th, 1937?
A. Nothing.
Mr. Keele: How much?
Mr. Walsh: Nothing.
Q. (By Mr. Walsh.) You were not one of the men who stayed inside of the plant, were you?
A. No. I was in there, but I got out after.
Q. How is that?
A. I say, I was in there working that day, but I came out, after.
1600 Q. When the trouble broke out, you left the building; is that right?
A. Well, I didn't feel so good; I was sick then, a little bit. I didn't feel good, so I went out.
Q. What time did you go out, Mike?
A. 3:30.
Q. 6:30?
A. 3:30.
Q. 3:30.
A. Yes.
Q. Now, during the time while the strike was in progress, did you do anything to help the men?
A. Yes.
Q. What did you do to help them?
A. Take down some cigarettes to them.
Q. Did you bring them anything else?
A. I don't bring them nothing else, but I see other fellows bringing different things.
Mr. Keele: What did he say?
Mr. Walsh: He said he didn't bring anything else, but he saw other fellows bring different things.
The Witness: They raised money to pay for them, too.
Q. (By Mr. Walsh.) Did you go on the picket line after the boys came out of the buildings?
A. Yes, sir; but not every day. I was kind of weak
1601 for a while. I catched cold, and I stayed a week after that at home in bed. Then I go on the picket lines for a while.
Q. Now, during the time you were employed there, did you receive some raises from time to time?

1602 A. Yes, I got raises there, first, I got 4 cents and then I got another raise.

Q. Did your foreman know that you belonged to this union?

A. Well, I don't know. I didn't tell him about it. If nobody don't ask me, I don't tell nobody.

Q. Did your foreman ever criticise you about the way in which you were doing your work?

A. How is that?

Q. Did your foreman ever bawl you out because of the way in which you were doing your work?

A. No, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) You sat down with the boys, did you not? You went in at the time they took over the buildings, did you not?

A. How was that again?

Q. You were in the buildings at the time they took over the buildings, were you not?

A. No, sir. I went home.

Mr. Walsh: He testified that he went home at 3:30.

Q. (By Mr. Keele.) And the only thing that you did in the way of helping the men, you say, was to take down some cigarettes to them; is that correct?

A. Yes, sir.

1603 Q. You did not take anything else down there?

A. Well, I bring them—once, the next day, I bring them a little lunch.

Q. A little lunch?

A. Yes, sir, for my son.

Q. Your son was in there, was he not?

A. Yes, sir. I don't know who took it after I put it in; I don't know whether my son got it or not.

Q. You do not know whether your son got it or not.

A. No.

Q. But you sent the lunch in?

A. I don't know who ate it.

Q. You do not know who ate it after it got in.

A. No, sir.

Q. Did you take anything else down to him?

A. Yes.
Q. Any bedding or any clothes?
A. Yes—well, no, I didn't take it myself, but I gave it to somebody to take down to him,—one blanket.
Q. You gave that to somebody else to take down?
A. Yes.
Q. A blanket?
A. Yes.
Q. Did you send him anything else?
A. Not myself; I didn't send nothing else.
1604 Q. You have never made application for reemployment, have you?
A. No.
Q. And you do not want to go back to work until all of the men go back; that is right, is it not?
A. Why, sure.
Q. Unless they all go back?
A. Well, if some don't want to go, I don't care, if they don't all want to go.
Q. But everybody who wants to go back, you want them to have a chance to go back, do you not?
A. Then, I will go back.
Q. Then, you are willing to go back?
A. Yes.
Q. But not until they all have a chance?
A. No.
Q. That is regardless of whether they were discharged for cause; you want them all back there before you go, those who want to go back; is that correct?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused; thank you.
(Witness excused.)
Mr. Walsh: With the exception of two witnesses, if
1605 the Examiner please, that will conclude the testimony on group 2. One of them is Joe Hoff now reported to be ill, in the hospital.
Mr. Keele: Do you want to stipulate as Hensley?
Mr. Walsh: Have you the Hensley papers?
Mr. Block: Yes.
Mr. Walsh: All right. We can clean that up. As far as Hoff is concerned, I think sometime during the course of the proceeding we can get him in.

Trial Examiner Dudley: What group is this in?

Mr. Walsh: This is in group 1.

Mr. Reporter, let the record show that it is hereby stipulated and agreed by and between counsel for the Fansteel Metallurgical Corporation, and counsel for the National Labor Relations Board, that Fred Hensley, if called to the stand as a witness, would testify: that he was employed for 19 years by Fansteel Metallurgical Corporation as a machinist; that his weekly rate of pay was $45 per week; that he was one of the men who occupied the buildings of the company between February 17th and February the 26th, 1937; that he was a respondent in the contempt proceeding, and a defendant in the injunction proceeding; that he occupied one of the buildings of the company from February 17th until February 23rd, at which time he became ill and was removed from the building in an ambulance furnished by the com-
1606 pany; that he was taken to Memorial Hospital, where he received treatment from a company doctor, at the expense of the company; and that he has never made application for reemployment.

Trial Examiner Dudley: Is it so stipulated?

Mr. Block: Yes. And let the record show that it is further stipulated and agreed by and between respective counsel that on the 13th day of April, 1937, said Fred Hensley, pursuant to a voluntary petition filed by him in the County Court of Lake County, Illinois, was declared insane, suffering under mental derangement, and unsafe to be at large, which order included the finding that the welfare of said Hensley and others required his restraint and commitment to some hospital or asylum for the insane; that thereupon it was ordered that said Hensley be committed to the Elgin State Hospital, at Elgin, Illinois, as a voluntary patient, pursuant to the laws of the state of Illinois; and that he was so removed to the Elgin State Hospital; and that there were no further orders entered in that case, which is numbered 13260 in the County Court of Lake County.

And further, it is rumored that he is not now confined in the Elgin State Hospital, but there has been no modification or change of that order of the County Court, and as it now stands, he is committed to the Elgin State Hospital.

Mr. Keele: He is not now confined.

Mr. Block: No.

1607 Mr. Keele: But he has not been discharged.

Mr. Block: I say, there has been no further order

entered since the original order of April 13, 1937, which order has not been vacated, set aside, or in any way modified.

Is that agreed upon?

Mr. Walsh: Yes, and it will be further stipulated that if an examination of the books of the company show that the weekly wage of said Hensley was different than the amount of $45, this stipulation may be corrected to reflect the proper amount.

Mr. Keele: All right.

Mr. Walsh: Joe Petraitis.

Trial Examiner Dudley: Is this group 1?

Mr. Walsh: Yes. This witness has not been sworn, if the Examiner please.

JOE PETRAITIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Joe Petraitis?

The Witness: Yes, sir.

Mr. Collins: Will you spell your last name, please, for the reporter.

The Witness: What?

Mr. Collins: Tell the reporter how you spell your last name.

1608 The Witness: My last name?

Mr. Collins: Yes; you spell your last name, P-e-t-r-a-i-t-i-s?

The Witness: Yes.

Mr. Collins: You were served with a subpoena, to appear here this morning before the Examiner, were you?

The Witness: Yes.

Mr. Collins: If the Examiner please, I would like to claim the privilege of the witness under section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 518 Georgia Avenue.

Q. Waukegan?

A. Yes, sir.

Q. How long have you been employed by Fansteel?
A. About 13 or 14 years.
Q. What is your job?
A. Well, I was working in the tool room making swaging dies.
Q. Did the plant operate between February 17th and February 26th, 1937?
A. What do you mean?
Q. I mean, was there any work going on at the plant between February 17th to February 26th?
1609 A. No.
Q. When did you draw your last pay from the company?
A. When did I draw it?
Q. Yes.
A. About in March.
Q. What day in March?
A. I don't know the date.
Q. The 5th of March?
A. About that.
Q. Did the company take up your pass at that time?
A. Yes.
Q. Did you talk to anybody about coming back to work?
A. No.
Q. Did anybody offer to take you back to work?
A. Why, I asked Anselm to take me back to work, but he said "No."
Q. When did you talk to Mr. Anselm about that?
A. Oh, about in April sometime, I don't know exactly or the last of March.
Q. How much did you draw per hour?
A. 77 cents.
Q. And you worked 40 hours a week?
A. Yes, sir.
Q. What did your weekly pay amount to?
A. Oh, about $30.80 or $30.75, or something like that.
1610 Q. How much money have you earned since February the 26th, 1937?
A. How much money I earned?
Q. Yes.
A. I don't earn anything.
Q. Are you one of the men who was occupying the buildings of the company?
A. Yes, sir.

Q. You stayed there from February the 17th to February the 26th?

A. Yes, sir.

Q. Are you one of the respondents in the contempt case—

A. Yes.

Q. —and one of the defendants in the injunction case?

A. Yes, sir.

Q. When the work stopped there on the 17th of February, the management did not tell the boys to quit work, did they?

A. No.

Q. The work stopped because the boys took over the buildings, is that right?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) When you talked to Mr. Anselm, he told you that they were having the swaging dies made outside, did he not?

1611 A. What do you mean?

Q. You said you talked to Mr. Anselm, and asked him for your job back. That is correct, is it not?

A. Yes, sir.

Q. And Mr. Anselm told you at that time that the work which you had been doing, they were now having done outside the factory, did he not?

A. Yes, sir.

Q. In other words, that your job had been abolished, and there was no longer a job of that kind in the plant. That is correct, is it not?

A. I never said that.

Q. No, that is what he said, is it not?

A. No, he didn't say that. He just said that my job was out, that is all.

Q. And he told you that the work that you had been doing they now were having done outside, by contract, did he not?

A. I don't remember that.

Q. Did he not explain to you at that time that the job, the work that you did in there, was no longer done in that department?

A. He say they don't do that in the department no more, that's all.

Q. That they did not do that in the department—they did not do that work in that department any more?

1612 A. Yes, that's all.

Q. You were in the buildings, as I understand it, from the time the men went in on the 17th—

A. Yes.

Q. —until the 26th?

A. Yes, sir.

Q. The full time they were in the buildings?

A. Yes, sir.

Q. Which building were you in there?

A. What?

Q. Which building were you in?

A. 3.

Q. No. 3?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

Mr. Keele: What did he say he made?

Mr. Walsh: He said he made nothing.

Mr. Keele: No, I mean, with the company?

Mr. Walsh: He said he made 77 cents an hour, worked 40 hours per week, and his weekly pay was about $30.75; and that he had earned nothing since February 26th, 1937.

Q. (By Trial Examiner Dudley.) Mr. Petraitis, when did you join the union?

1613 A. July.

Q. 1936?

A. Yes, sir.

Trial Examiner Dudley: That is all.

(Witness excused.)

Mr. Walsh: Mr. Ohlson. This witness has not been sworn, if the Examiner please.

THEODORE OHLSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Theodore Ohlson?

The Witness: Yes, sir.

Mr. Collins: Will you spell your last name for the reporter, please.

The Witness: O-h-l-s-o-n.

Mr. Collins: Have you been served with a subpoena to appear before the Examiner here this morning?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, I would like to claim the privilege of the witness under section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 637 North County Street.

1614 Q. You will have to talk up loud, Mr. Ohlson, so that everybody can hear you. How long were you employed by Fansteel?

A. Oh, I should say about 11 or 12 years.

Q. What was your job?

A. Machinist.

Q. Did you work—

A. (Continuing) That is, the last job. The first job, for about the first four or five years, I was in the tool crib, and then the last 7 or 8 years about, I was in the machine shop.

Q. When did you draw your last pay from the company?

A. Well, I drew one around in March sometime.

Q. Did the company take up your pass at that time?

A. Yes, sir.

Q. When did you join the union?

A. Around August.

Q. 1936?

A. Yes.

Q. Did you talk to anybody about going back to work when you got your last pay?

A. No officials.

Q. Well, have you talked to anybody since that time about going back to work?

A. Not about going back, no.

1615 Q. What was your hourly rate of pay?

A. 72 cents per hour.

Q. And you worked 40 hours per week, did you?

A. Yes, sir.

Q. What did your weekly pay amount to?

A. Well, now, let me see. $27.80, I think is what it would amount to.

Q. How much money have you earned since the 26th of February, 1937?

A. Well, so far I haven't earned anything.

Q. Were you one of the men who occupied the buildings of the company between February the 17th and February the 26th, 1937?

A. Yes, sir.

Q. You were one of the defendants in the injunction case, were you?

A. Yes.

Q. And one of the respondents in the contempt case; is that right?

A. Yes, sir.

Q. When the trouble broke out on the 17th of February, the management did not ask the men to stop work, did they?

A. No; I never heard that.

Q. The stoppage of work was caused by the men taking over the buildings of the company; is that right?

1616 A. Yes, sir.

Q. You have never since the trouble was over been offered reemployment by the company; is that correct?

A. No, sir, not by the company.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) And you have never made application for reemployment, have you, Mr. Ohlson?

A. No, sir.

Q. You would not go back to work unless all of the men went back, would you?

A. Well, not as far as that is concerned, but if the strike is settled, one way or the other, that is all I want, to see it settled.

Q. When you say that you want to see the strike settled, do you mean by that, that you want to see the men go back to the plant and go to work?

A. Yes, sir.

Q. And you do not want to go back unless that takes place, do you?

A. No, sir.

Q. That is correct, is it not?

A. Right.

Q. Now, Mr. Ohlson, sometime after the 26th of February, you were arrested, were you not, at 2:00 o'clock in the
1617 morning, or 3:00 o'clock in the morning, down on the premises of Mr. Aitchison?

A. No, sir.

Q. (Continuing.) By guards posted there?

A. No, sir, not on his premises.

Q. Well, it is a dead-end street there, and you were arrested in a car there at 3:00 o'clock in the morning, were you not?

A. I was arrested on that street, yes.

Q. And you—

Mr. Walsh: Just a moment. We object to any inquiry along this line, if the Examiner please, as not being material to any issue that is being tried in this proceeding.

Q. (By Mr. Keele.) And you told the police that you were waiting for a street car, did you not?

Mr. Walsh: Just a moment.

A. What is that?

Q. (By Mr. Keele.) You told the police that the reason that you were down there was that you were waiting for a street car, did you not? Is that not right?

A. I did not.

Q. How?

A. I did not.

Q. Did not the woman who was with you, tell them that? No, sir.

1618 Q. And you told me, and you told the police, that you were on your way from—

A. I was on my way—

Q. —North Chicago—

A. I was—

Q. —to Waukegan, by way of Evanston; is that right?

A. I was on my way home from Evanston.

Q. And you had gone from North Chicago—

A. To Evanston?

Q. —to Evanston?

A. Yes.

Q. And at 3:00 o'clock in the morning, you were out there, but you did not have any reason for going to Evanston, except to take a drive?

A. Except to take a ride, yes.

Q. And you came down on that street, which is a good mile

from the highway, and is a dead-end street, and you just happened to be in front of Mr. Aitchison's house; is that right?

A. Well, when you get lost, you know, you are liable to wind up any place.

Q. Yes, but you did wind up in front of Mr. Aitchison's house, did you not?

A. I wouldn't say that, no. I was on the street—

Q. Well—

1619 A. —and I was stopped by the police, and I didn't know.

Q. As a matter of fact, you stopped and were turning around in that dead-end street, were you not?

A. No, sir.

Q. You could not go any further?

A. No, sir, not when I was stopped.

Q. Well, that was a dead-end street, was it not?

A. I don't know.

Q. Let us have the facts.

A. I don't know, I hadn't even gotten down to the end of the street.

Q. You know that street only goes about 50 feet further there, do you not?

A. I don't know. I never got down there.

Q. And you did not know that was a dead-end street?

A. No.

Q. You never had been on that street before?

A. No.

Q. In order to reach that street, you have got to make 15 or 20 turns from the highway, have you not?

A. I don't know how to get down there now.

Q. How did you get down there at that time?

A. You know as much about it as I do.

Q. I was not with you that night, was I?

A. No, sir.

1620 Q. All right. Well, then, how did you get down there?

A. I was just—

Q. You were the one who was down there?

A. I was just going around in circles, I guess.

Q. And you just happened to land in front of Mr. Aitchison's house at 3.00 o'clock in the morning?

A. It wasn't 3:00 o'clock.

Q. What time was it?

A. I don't know.

Q. 4:00 o'clock?
A. No, no.
Q. All right; 2:00 o'clock.
A. Well—
Q. Daylight Saving Time.
A. (No answer.)
Q. How?
A. 2:00 o'clock Daylight Saving Time?
Q. You were in the strike in the buildings?
A. Yes.
Q. In which building, 3 or 5?
A. 5.
Q. From the time it started on the 17th—
A. Yes.
Q. —until the morning of the 26th?
A. Yes, sir.
1621 Q. You went in when the other men went in?
A. Yes, sir.
Q. And you came out when they came out?
A. Right.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: You are excused; thank you.

(Witness excused.)

Mr. Walsh: Those are all of the witnesses I have here, in this particular group right now, if the Examiner please.

May I suggest that we recess for lunch.

Trial Examiner Dudley: Are there any left in the group?

Mr. Walsh: One or two: there is one man whom I think we can get in tomorrow, or the next day, and one who has not shown up, but who may come in before we conclude the hearing, and we can put him on at that time.

Trial Examiner Dudley: You are ready to start with group 3, then?

Mr. Walsh: Yes. There are two in group 2 who have not shown up, but I will start the girls' cases this afternoon, group 3.

Trial Examiner Dudley: The hearing is now recessed, to reconvene at 1:00 o'clock this afternoon.

(Whereupon, at 12:00 noon a recess was taken until 1:00 o'clock p. m.)

1622 After Recess.

(The hearing was resumed at 1:00 o'clock p. m. pursuant to recess.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: Marguerite Seifert. Will you swear the witness, Mr. Examiner, please.

MARGUERITE SEIFERT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Marguerite Seifert?

The Witness: Yes, sir.

Mr. Collins: Will you spell your last name for the reporter, please.

The Witness: S-e-i-f-e-r-t.

Mr. Collins: Have you been served with a subpoena, to appear before the Examiner here this afternoon?

The Witness: Yes, sir.

Trial Examiner Dudley: Is your first name Margaret or Marguerite?

The Witness: Marguerite.

Mr. Collins: Marguerite?

The Witness: Yes, sir.

Mr. Collins: You were served with a subpoena, were you?

The Witness: I was.

1623 Mr. Collins: You are here in response to that subpoena?

The Witness: Yes.

Mr. Collins: If the Examiner please, I would like to claim the exemption of the witness, or rather, the privilege of the witness, under paragraph 11, section 3 of the National Labor Relations Act.

Trial Examiner Dudley: Granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 1340 Adams Street, North Chicago, Illinois.

Q. How long have you been employed by the Fansteel Metallurgical Corporation?

A. About 8 months.
Q. What was your job?
A. Inspecting tungsten disks.
Q. That was in the contact department?
A. Yes.
Q. When did you join the union?
A. I think it was in the latter part of August.
Q. 1936?
A. Right.
Q. What was your hourly rate of pay?
A. 40 cents per hour.
Q. And you worked 40 hours per week, did you?
A. Well, a lot of times I worked overtime.
1624 Q. What did your weekly pay amount to?
A. Well, $16.
Q. $16?
A. Yes, sir.
Q. How much money have you earned since February 26th, 1937?
A. Nothing.
Q. When was the last date that you worked for the company?
A. The day we were told to go home.
Q. Was that February 17th?
A. Yes.
Q. When did you draw your last pay?
A. Well, my last pay, I think, was about the last of March.
Q. Did you turn in your pass at that time?
A. I had to turn in my pass, yes, sir, before they would give me my pay check.
Q. Did you talk to anybody about becoming reemployed?
A. No.
Q. Did anyone ever tell you that you were laid off?
A. No, they didn't.
Q. When the trouble started at the plant on the 17th of February, did you leave the plant at that time?
A. Yes, sir.
Q. At what time did you leave the plant?
A. Oh, it was about a quarter to 3:00, I guess, by
1625 the time we got out of there.
Q. Who told you to go home?
A. Well, I think Luther Henry was in there, and then I think there was some of the boys of the committee, that told us to go.

Q. Did you take any part in the strike activities that went on there?

A. No, I didn't.

Q. During the time that you were working for Fansteel, did you receive any raises?

A. Well, yes, sir, there was that nickel raise that everybody got.

Q. That was in November of 1936?

A. I think it was.

Q. During the time that you were working there, did you tell your foreman, or your forelady, that you belonged to this union?

A. Well, that was the time that there was a slip of paper going around, that everybody was supposed to sign; and I didn't sign it; and she wanted to know why I didn't sign it.

Q. What was that slip of paper for?

A. Well, it was about having the company go around, you know,—if you wanted more coal, or more heat, or something like that. It was supposed—

1626 Q. When did that slip of paper go around?

A. Well, I couldn't just say when it was, but I know it was after then that most of us joined the union—I think.

Q. Did you have a foreman, or a forelady?

A. A forelady.

Q. Did your forelady ever criticise you in connection with the work that you did?

A. No.

Q. Did she ever suggest any changes in the way you did your work?

A. No.

Q. You have never been called to return to work, have you?

A. No.

Q. (Continuing.) Since the trouble was over, there?

A. I have not.

Q. Did you ever make any individual application for work down there?

A. No, I didn't.

Mr. Walsh: You may inquire.

Respondents' counsel are not here yet.

Mr. Collins: I think they are coming in just now, your Honor.

Trial Examiner Dudley: We are ready for the cross-examination of this witness.

Mr. Walsh: The reporter will read to Mr. Keele 1627 what has transpired in his absence.

Mr. Keele: No, that is not necessary. Can you just tell me in a word what she has testified to?

Mr. Walsh: Her name is Marguerite Seifert; she worked about 8 months in the contact department; she joined the union the latter part of August, 1936; her hourly rate was 40 cents, and her weekly pay about $16; she has earned nothing since February 26th. Her last pay was the last of March; she left the plant on the 17th; and she did not talk to anybody about becoming reemployed.

Mr. Keele: I migh ask her just a few questions.

Cross-Examination.

Q. (By Mr. Keele.) When did you join the union, Miss Seifert?

A. In August.

Q. August.

A. Yes, sir.

Q. Did you tell your forelady—

A. Yes.

Q. —that you were a member of the union?

A. Yes, I did.

Q. Did you take any active part in union affairs?

A. No.

Q. Were you on any committees?

A. No, I wasn't.

Q. Do you know if Mr. Henry knew that you were 1628 a member of union?

A. I don't know if he did or no .

Q. Was there any discussion with your forelady, or whatever you wish to call her—that was Mary Atkinson, was it not?

A. Yes.

Q. Did you have any discussion with her about your being a member of the union?

A. The only thing she told me was that she was surprised at me; that was all.

Q. She said she was surprised at you?

A. Yes, sir.

Q. And that was with respect to the union?
A. Yes, sir.
Q. And that is all that she did say, is it?
A. Yes, sir.
Q. That is all the conversation you had with anybody?
A. Yes, sir.
Q. With respect to your joining the union?
A. Yes, sir.
Q. Did you have any conversation with anyone else—
A. No.
Q. (Continuing)—who was connected with the management?
A. No.
Q. No one at all?
No.
1629 Q. Did you make application for reemployment?
A. No, I didn't.
Q. Why not?
A. Well, because they told me they would call me back, when I left that day.
Q. They said if they wanted you, or needed you, they would call you?
A. Yes.
Q. Now, when you left the plant that day, you left at the suggestion, I believe, of Luther Henry, with the other girls?
A. Yes.
Q. That is, at the time you left?
A. Yes; we left there.
Q. Well, I mean, it was not a question of your being ordered out by the management, as a matter of discharge, but at the time that the plant was taken over by the men, they just suggested that all of the girls leave?
A. Yes.
Q. That is correct, is it?
A. Yes, sir.
Q. And no threats of any kind were ever made?
A. No.
Q. You said that there was no discussion.
A. No.
Q. But no threats, or rumors, came to you—
1630 A. No.
Q. —of the possibility of discharge, as the result of your union activities, did there?

A. No.
Q. Do you attend meetings of the union?
A. No, I don't think I have.
Q. Did you ever pay any dues?
A. No, sir.
Q. Well, what was the extent of your participation in union affairs, then?
A. (No answer.)
Q. I mean, what did you do in connection with the union, outside of signing a card? I assume you did that.
A. I don't think there was anything else.
Q. That was all you did?
A. I think so.
Q. You never took part in any of the meetings of the committees, did you?
A. No.
Q. Or of the meetings—the general meetings of the lodge?
A. No.
Q. Or anything like that?
A. No.
Q. What department were you in, Miss Seifert?
A. I was in the contact department.
1631 Q. In the contact department.
A. Yes.
Q. How many girls were there in the contact department,—or how many women?
A. Well, I think there was 23 working there, in the part that I worked in, under Mary Atkinson.
Q. 23 with Mary Atkinson, counting her, do you mean?
A. I am not sure.
Q. How many of those girls, or those women, belonged to the union on February 17th, at the time that the strike occurred?
A. I couldn't tell you.
Q. Well, how many did you know belonged?
A. Well, there was about four of them that had joined the union, that I knew of.
Q. About four that you know of?
A. Yes, sir.
Q. That is correct, is it?
A. Yes, sir.
Q. Who were they?
A. Evelyn Graimer.

Q. Evelyn Graimer?
A. Yes, sir.
Q. Who else?
A. Frances Fellens.
Q. Frances Fellens.
1632 A. Yes.
Q. Anyone else?
A. And I think there was Mabel Carlson.
Q. Yes.
A. And myself. That made the four.
Q. Did you take any part in the strike itself during the period from February the 17th to February the 26th, inclusive?
A. No, sir.
Q. Did you appear down at the factory?
A. Why, I wasn't down at the factory, no, sir; I was down to the junction at one time; I went by there; I was in a car.
Q. How many times?
A. Only once that I was in a car, and went down there and then there was a couple of times I went down there after the first gas attack, to see how bad the windows were smashed up.
Q. So that you were down there three times?
A. Yes, sir.
Q. And you were not down there more than a few minutes each time, were you?
A. I was just there a couple of minutes.
Q. You did not help put any food into the place, did you?
A. No.
Q. Did you bring any food down there?
A. No.
1633 Q. You did not do anything in the way of helping those men retain possession of the premises, did you?
A. No, sir.
Q. You did not appear on the picket line at any time, did you?
A. No, sir.
Q. Did you have any discussion with any of the management—
A. No, sir.
Q. Just a moment.—or any person connected with the management, during that period of time?
A. No, sir.

Q. And you never went down to see any member of the management after the 26th of February?

A. No.

Q. After the plant started again?

A. No, sir.

Q. Would you have gone back to work, Miss Seifert if the company had asked you to go back to work, as long as the men who had been in the buildings were out?

A. Not as long as they don't recognize the union, and they don't take none of them back.

Q. As long as they do not recognize the union, you would not go back to work?

A. And don't take any of the rest of the men back.

Q. All right. You would not have gone back anyway 1634 except under certain conditions; that is right, is it not?

A. That is right.

Q. And even though you got the same job, at the same rate of pay?

A. That is right.

Q. One of those conditions is, the reemployment of everyone who was in the strike; is that correct?

A. Yes, sir.

Q. Regardless of the cause of their discharge?

A. Yes.

Q. And regardless of what they may have done?

A. Right.

Q. Or the conditions then existing, at the time of their discharge?

A. That is right.

Q. At the plant, that is.

A. Yes.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: You are excused, Miss Seifert; thank you very much.

(Witness excused.)

Mr. Walsh: Frances Fellens.

FRANCES FELLENS called as a witness for the National Labor Relations Board, having been first duly sworn, 1635 testified as follows:

Mr. Collins: Your name is Frances Fellens?
The Witness: Yes, sir.
Mr. Collins: Will you spell your last name for the reporter, please.
The Witness: F-e-l-l-e-n-s.
Mr. Collins: Have you been served with a subpoena to appear before the Trial Examiner here this afternoon?
The Witness: Yes, sir.
Mr. Collins: If the Examiner please, I would like to claim the exemption of the witness, or the privilege of the witness, rather, under section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: Granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address, Miss Fellens?
A. 220 Washington Park, Waukegan, Illinois.
Q. When were you employed by Fansteel?
A. I worked there two years. I started there in January of 1935, I believe it was.
Q. What was your job?
A. I was working, assembling contact points in the contact department.
Q. When did you join the union?
A. August, 1936.
1636 Q. What was your hourly rate of pay?
A. Well, I worked on piecework most of the time.
Q. On piecework most of the time?
A. Yes, sir, but it was 52 cents per hour.
Q. How much did your weekly pay amount to?
A. Well, around $21.
Q. When did you draw your last pay check?
A. March 5th.
Q. Did you turn in your pass at that time?
A. Well, I asked them if they wanted it—I asked him and he said, "Yes, he would take that one and give me another one".

Q. Did he give you another pass?
A. He gave me a red one.
Q. A red one.
A. Yes, sir.
Q. Did they tell you to report for duty?
A. No, sir, they just said that they would let me know when they wanted me to come back.
Q. And they have never since then called you; is that correct?
A. No, they haven't.
Q. Do you know whether or not your department is operating at the present time?
A. I have heard that it is.
Q. Does somebody else have your job?
A. That is what I heard.
1637 Q. How much money have you earned since February the 26th?
A. Around $18.
Q. What did you do, to earn that money
A. I earned that money taking care of the baby of a girl friend of mine.
Q. Normally, when you are working at Fansteel, do you do any work on the outside for pay?
A. No, sir.
1638 Q. Are you working at the present time?
Off and on, I am.
Q. What are you working at now?
A. Taking care of a baby.
Q. Oh, the same employment.
A. Yes, sir.
Q. Now, during the time that you were working for the company, did you receive any raises from the company?
A. Yes, sir. Previous to the strike we had, I believe, two or three raises.
Q. Two or three raises.
A. Yes.
Q. And how much did those raises amount to?
A. Well, let me see.
Q. I suppose you participated in the nickel raise that they gave everybody in November of 1936?
A. Well, you see, we have rates on our work.
Q. Piecework rates?
A. Yes, sir.
Q. Yes?

A. And they changed them, and I couldn't say just how much it was, the last raise we got.

Q. When did that take place, do you remember?

A. The last raise that we got, I think was in the latter part of December, or the first part of January.

1639 Q. Did they change your rates sometime in November?

A. I believe they did on certain jobs, yes, sir.

Q. During the time you worked there, did your forelady, or your foreman, ever criticize you for the way in which you did your work?

A. No, sir.

Q. Did anybody tell you that you were not doing your work properly?

A. No, sir.

Q. Were you making the standard that was set up for your work?

A. I believe so.

Q. Did the other girls in the department with you, do more work or less work than you did?

A. Well, not to my knowledge. I really don't know, but I think we did about the same amount, on that job.

Q. Everybody about the same.

A. Yes.

Q. Did you usually talk with the other girls, as to how much they were making, and how much you were making?

A. No, we didn't discuss that.

Q. I see. Your rate of pay was 52 cents per hour; is that right?

A. The piecework rate.

Q. That is what you earned.

1640 A. Yes.

Q. At piecework.

A. Yes, sir.

Q. And you averaged $21 per week?

A. Well, I would say, it would average around that, yes, sir.

Q. Would it sometimes be more than $21?

A. Well, the last check that I got was $57.94, but that was for 114 hours.

Q. And that was covering the period from February the 1st to February the 15th, was it not?

A. Yes, sir.

Q. Now, at the time the trouble broke out, did you leave the building at once?

A. Yes, sir, I did.
Q. Who told you to leave the building?
A. I believe it was Luther Henry.
Q. He just said, "You had better go home", did he?
A. Yes.
Q. That there was going to be trouble, or something of that kind; is that right?
A. There wasn't anything for us to do.
Q. Now, did the work stop, then?
A. Yes, sir.
Q. All of the work stopped then, did it?
1641 A. Yes, sir.
Q. And did your department, as well.
A. Yes.
Q. The management did not tell you to stop work then, did they?
A. No, sir.
Q. Other than Luther Henry telling you to go home?
A. Yes.
Q. After the trouble had started; is that right?
A. Yes, sir.
Q. Now, during the progress of the strike, did you take any active part in the strike?
A. No, sir; I was out of town.
Q. You were out of town, is that right?
A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) When did you join the union, Miss Fellens?
A. In August 136.
Q. August 1936.
A. Yes, sir.
Q. And at that time you were working in what department, did you say?
A. I was in the—I was assembling contact points, in the Contact Department.
1642 Q. I see. And were there other ladies in that department, also employed in that department?
A. Yes, sir.
Q. About how many were there, would you say?
A. Well, do you mean, now, in just my department, or in both?

Q. Well, let us take them separately first. Take the inspection, and contact.
A. Inspection and contact?
Q. Yes.
A. Well—
Q. Approximately.
A. Oh, it varied; but I would say, around 50.
Q. About 50?
A. Yes, sir, I think so, although there might have been more than that.
Q. And did the number change from time to time, in the two departments?
A. Do you mean, did they hire more or less?
Q. Did they always have 50?
A. No; sometimes it was less.
Q. Sometimes less?
A. Yes, sir.
Q. And sometimes more.
A. Yes.
1643 Q. I mean, during the time that you were employed.
A. Well, that was about the most girls that they had.
Q. Yes, but they have had fewer than that number, have they not?
A. Yes, sir.
Q. Now, did you go back, to try to get your job back again?
A. No, sir.
Q. You say that they took up your pass, took up the pass from you?
A. They took my old one.
Q. And gave you another one?
A. Gave me a new one.
Q. Gave you a new one.
A. Yes, sir.
Q. From whom did you get the new pass?
A. George Schardt.
Q. George Schardt.
A. Yes.
Q. Have you got the pass with you?
A. Yes, I have.
Q. May I see it, please.
A. Yes.
Q. Now, let me see. The pass which you have handed to me is red in color; that is true, is it not?
A. Yes, sir.

1644 Q. And before that time, you had a different pass, a pass of a different color?

A. Yes, sir.

Q. What was its color?

A. Well, let me see. I think it was white, or cream-color. I don't remember exactly.

Q. And upon what date was it, did you say, the other pass was taken up from you?

A. Well—

Q. When was it?

A. When I went after my check, on the 5th of March.

Q. 1937?

A. Yes, sir.

Q. And where did you get this pass?

A. I got it right at the time I got my check. I asked him if he wanted my pass back, and he took that one, and he said, "Yes." He said, "You will have to have another one." I didn't know what for.

Q. Now, this pass is the pass that all employees who have been working in the plant, generally carry for admittance into the plant; that is true, is it not?

A. Yes, sir.

Q. Were you not told at the time you got this pass, to report for work?

A. No, I was not.

1645 Q. Well, why was this pass given to you—

A. I couldn't tell you.

Q. —on March 5th?

A. I don't know.

Q. Your old pass was taken up, you say.

A. It was.

Q. And they gave you this new one.

A. Yes, sir.

Q. And you never reported there.

A. No, sir.

Q. And you were never told to report—

A. Nobody ever asked me to.

Q. That is what I am getting at.

A. No.

Q. You were never told to report there?

A. No, sir.

Q. Now, would you have gone back to work if they had told you to report on the date when this pass was given to you—that is, this new pass, the red pass?

A. No, sir, I wouldn't.
Q. I see. That is really the reason, then, that you never reported back, is it not?
A. I told you before, I don't know why they did give me that pass.
Q. Well, but at the time they gave you the pass, they
1646 told you to come back to work, did they not?
A. No.
Q. They did not?
A. No, sir, they did not. Nothing was said to me about coming back to work.
Q. Well, but you say that you would not have gone back to work, anyway.
A. No, I wouldn't.
Q. Not unless certain conditions which you have in mind, were complied with?
A. Yes, sir.
Q. Regardless of what the situation might be at the plant.
A. Yes, sir.
Q. That is, if they did not do exactly as you thought they should have done, you would not have gone back to work?
A. Why, I was waiting for them to sign an agreement with the union.
Q. Well, I say, whatever the conditions were, you had certain conditions in your mind, and if the company did not agree to those particular conditions, whatever they might have been, you would not have gone back to work even if your job had been offered to you, would you?
A. No.
Q. And even though you might receive the same pay, in the same position.
1647 A. No.
Q. (Continuing) Which you occupied before.
A. I wouldn't have gone back.
Q. You would not have gone back.
A. Right.
Q. Did you ask for this pass; that is, this so-called new pass, or red pass?
A. No, sir, I did not. I just asked George Schardt if he wanted my pass.
Q. Yes.
A. The one I had.
Q. Yes?
A. And he said, "Yes, we will take that pass."

Q. And then he gave you this new one?
A. Yes.
Q. Or was it somebody else?
A. No, sir, he did; he gave it to me; and there was a girl in another room there, I don't know what her name is, but she was present when he gave it to me. He gave it to me without Mr. Anselm's signature, and then he went back in and got the signature, and brought it back.
Q. Mr. Fellens, do you care if we borrow this for a day or two?
A. Well—
Q. It is our property, you know.
1648 A. If it is all right.
Mr. Block: I ask that it remain here with the Board, just as the other one did.
Trial Examiner Dudley: Do you want to leave it with the reporter, as you did the other one; have it marked as an exhibit, for identification, and leave it with the reporter for the record?
Mr. Block: Yes. Supposing we have it marked as an exhibit for identification. It has not got her address on it, anyway.
Trial Examiner Dudley: Pardon me?
Mr. Block: It does not show her address, anyway. There is no address on it; just her name. Will you mark it for identification, please, Mr. Reporter.
(The card referred to was marked Respondent's Exhibit No. 6 for identification.)
Mr. Block: And may it be understood that Respondent's Exhibit 6 for identification will remain here in the custody of the reporter, with the other exhibits.
Trial Examiner Dudley: Very well.
Mr. Block: That is all.
Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh.) Miss Fellens, what were those conditions counsel referred to, that you have in mind, that
1649 you thought the company ought to comply with before you go back to work?
A. Well, I was really surprised. I thought that they would recognize the union, and that we would soon be back to work.

Q. And you did not want to go back unless everybody else went back, did you?

A. No, sir, I did not. I didn't think it would help matters any.

Mr. Walsh: All right.

Re-Cross Examination.

Q. (By Mr. Block.) Well, Miss Fellens, suppose, at the time you reported and got the second pass, that there was not sufficient work for the entire number. You still would have refused to go back, unless they all went back, would you not?

A. Well, I think I would have, yes, sir.

Q. You would have, would you not?

A. Refused to go back?

Q. Yes.

A. I believe I would have.

Q. That is what I thought you said.

A. Yes, sir.

Mr. Block: That is all.

Re-direct Examination.

Q. (By Mr. Walsh.) Miss Fellens, if there just was not any work for some of the fellows at that time, and every-
1650 body else had gone back, but some of them were kept out because there was not any work, you would have gone back; is that right?

A. Well, I believe they would have called the fellows back, when they got work for them.

Mr. Walsh: That is all.

Trial Examiner Dudley: Is that all with the witness?

Mr. Block: Nothing further.

Trial Examiner Dudley: You are excused; thank you very much.

(Witness excused.)

Mr. Walsh: Fern Gartley. Will you swear the witness, if the Examiner please.

FERN GARTLEY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Fern Gartley?
The Witness: Yes, sir.
Mr. Collins: Will you spell your last name for the reporter please.
The Witness: G-a-r-t-l-e-y.
Mr. Collins: Have you been served with a supoena, Miss Gartley, to appear here before the Trial Examiner this afternoon?
The Witness: Yes, sir.
Mr. Collins: I would like to claim the privilege of the witness, if your Honor please, under Section 11, paragraph
1651 3 of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. 1424 Lincoln Street, North Chicago, Illinois.
Q. Waukegan?
A. No, North Chicago.
Q. Oh, North Chicago.
A. Yes.
Q. How long were you employed by Fansteel?
A. A little over two years.
Q. You will have to talk up a little louder, Miss Gartley.
A. A little over two years.
Q. What was your job?
A. Inspecting contact points.
Q. When did you join the union?
A. January the 8th, 1937.
Q. What was your hourly rate of pay with the company?
A. 42 cents.
Q. How many hours per week did you work?
A. 40 hours a week, unless we worked on Saturday.
Q. How much did your weekly pay amount to?
A. About $16.80.
Q. When did you draw your last pay for the company?
A. March 5th.

1652 Q. At that time did the company take up your pass?
A. No, they didn't.
Q. Did you talk to anybody about going back to work?
A. Well, I called the forelady, and she said that they had somebody in my place.
Q. During the time that you were working there, did the forelady criticize the way in which you did your work?
A. No, she didn't.
Q. Did you receive any raises while you worked for the company?
A. Yes, sir, I did; I got two. One was a two cent raise, and the other was a nickel raise.
Q. At the time the trouble broke out on February the 17th, 1937, were you working?
A. Yes, sir.
Q. Who told you to go home?
A. They just told us to clean up our stuff, and go home.
Q. Who told you that?
A. Well, some of the guys came in there; that was—
Q. Some of the men on that committee?
A. Yes, sir.
Q. Was there any official of the company there?
A. No, there wasn't, not at that time.
Q. Did you later, after the trouble was over, and the plant reopened, go back down there to go to work?
1653 A. No, I didn't.
Q. How much money have you earned since February the 26th, 1937?
A. None.
Q. Did your forelady know whether or not you were a member of the union?
A. I don't know if she did or not.
Q. Did you ever talk it over with her?
A. No.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) What time of the day on the 17th of February were you told by the committee to leave the plant?
A. About two-thirty, or a quarter to three.
Q. Where were you at the time?
A. Working.
Q. You were at your work.

A. Yes.
Q. And where were you; in what building?
A. Building 3.
Q. Building 3.
A. Yes, sir.
Q. Were there other women there also?
A. Yes, sir.
Q. Now, who was it on the committee, who told you
1654 to leave your work at that time?
A. Well, I don't know. I was busy working, and two guys came in and hollered, "Stop working, and go on home."
Q. Do you know who they were?
A. No, sir. I didn't even bother looking up. They went right by.
Q. What do you mean by "the committee"; two members of a committee?
A. Yes.
Q. What committee?
A. The C. I. O.—or, the guys upstairs, on the committee.
Q. Well, first, they were employees of the Fansteel Company, were they not?
A. Yes, sir.
Q. And second, they were members of the same union to which you belonged?
A. Yes, sir.
Q. And that was during working hours?
A. Yes.
Q. When they told you to leave the building.
A. Yes.
Q. And as I understand it, you left?
A. Yes, sir.
Q. Without talking to anybody else about it.
A. Yes.
1655 Q. That is right, is it?
A. Yes.
Q. Now then, this department that you were in, had how many ladies in it—or how many women employees?
A. Well, there is two departments.
Q. Taking the two together, then.
A. Well, there is about 50, I would say; about 45 or 50 altogether.
Q. It is true that they did not always have the same number of women in that department, is it not?
A. No, they didn't. There was some new ones hired.

Q. How?
A. There was some new ones.
Q. Some what?
A. New ones.
Q. Well, I say, the number would change from time to time?
A. Yes.
Q. That is true, is it not?
A. Yes, sir.
Q. That has been the practice?
A. Yes.
Q. At least during the period of time when you worked there; that is right, is it not?
A. Yes, sir.
Q. Now, then, when this committee told you to leave,
1656 you left?
A. Yes, sir.
Q. You did not go back to the place at all?
A. No.
Q. Did you ever go back there?
A. No.
Q. Did you ever ask for your employment back again?
A. I called up the forelady; I didn't go down there, though.
Q. You called her up?
A. Yes, sir.
Q. When?
A. Oh, that was after they put that notice in the paper, that we could go back.
Q. Whom did you call?
A. Mary Atkinson.
Q. Was she your forelady?
A. Yes, sir.
Q. Do you know when you called?
A. Oh, after the strike.
Q. Well, but I mean, would it be sometime in March, or when?
A. It would be at the end of February.
Q. You think it was the latter part of February?
A. Or the first of March.
Q. And did you go down there, after you talked with her?
A. No, I didn't.
1657 Q. Would you have gone back to work without the others?

A. Not now, I wouldn't have.
Q. You say, not now, you would not have.
A. No.
Q. That is, at the present time you feel that your return to the Fansteel Company as an employee, would have to be under certain conditions?
A. Yes.
Q. That is right, is it?
A. Yes, sir.
Q. I direct your attention again, Miss Gartley, to the time when you left the plant on February the 17th. You remember that occasion?
A. Yes, sir.
Q. Were there other people in the building at that time?
A. Just the girls that was working in the department.
Q. Well, this remark that the two members of the committee made, to leave; was that made just to you, or was it made to all of them?
A. They came in and yelled it out.
Q. How?
A. I say, they came in and hollered it out, that we should quit work and go.
Q. Yes. Well now, I want to get it straight. They came in and hollered for you to quit work?
1658 A. Yes.
Q. Or, to leave the building?
A. Yes.
Q. Was that remark—or were those remarks directed to all of the women who were in there?
A. Yes, sir.
Q. And did they thereupon all leave?
A. Yes, sir.
Q. Now, before you left the building did you talk to anybody else at all?
A. No, I didn't.
Q. Nobody at all?
A. No.
Q. No officer of the company?
A. No.
Q. To your forelady?
A. No.
Q. Or anybody else connected with the company?
A. No, sir.
Q. Did you know what it was all about, when they told you to leave at that time?

A. No, sir, I didn't. I was kind of excited, and I didn't know. I just walked out.

Q. Had you talked that over with someone?

A. No, I hadn't.

1659 Q. You did not have the permission of anyone to leave your work that day, did you?

A. No, sir.

Mr. Block: I think that is all.

Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh.) What paper was it that the notice was in, Miss Gartley?

A. The Waukegan Sun.

Q. What day did that notice appear; do you remember?

A. Nine days after—or, right after the fellows got out, they had a piece in there that if they came back, they would get their nine days pay; or something like that.

Q. Do you remember what day that was—the strike had been on nine days; is that right?

A. Yes, sir.

Mr. Block: No, she said nine days after. That is what you said, is it not?

Q. (By Mr. Walsh.) Was it nine days after the men were out of the buildings?

A. A week or so after.

Q. How?

A. About a week or so after they were out, I believe.

Q. About a week or so after they were out?

A. Yes, sir.

1660 Q. That is when the notice appeared in the paper?

A. Yes, sir.

Q. In the Waukegan Sun.

A. Yes, sir.

Mr. Walsh: Thank you. That is all.

Mr. Block: Nothing further.

Trial Examiner Dudley: Just a moment, please, Miss Gartley. I want to ask you one or two questions.

Q. (By Trial Examiner Dudley.) Did you take any part in picketing after the strike?

A. No, I didn't.

Q. Did you help in any way in passing in food or clothing?

A. No, sir, I didn't. I was down there, but I didn't put anything in there.

Q. That was along in November?
A. Yes.
Q. The general 5 cent raise.
A. Yes, sir.
Q. You have never been called to return to work?
A. No, sir.
1664 Q. Since you left?
A. Well, no, sir, I was never called, but then, on the 26th, I met my boss and he says, "When everything is settled and fixed up," he says, "I will notify you"; but he never did.
Q. I see.
A. That was the 26th.
Q. Of February?
A. Yes, sir.
Q. Had the men at that time been driven out of the plant?
A. Yes.
Q. Who is your boss?
A. Johnny Zivic.
Q. Johnny Zivic?
A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) What building were you in, when you were told to leave?
A. Building 5.
Q. And is that the same building that Miss Gartley was in?
A. Miss who?
Q. Gartley.
A. I don't know her.
Q. Did somebody walk in and tell you to leave?
A. Do you mean, as an individual?
1665 Q. Well, or as a group.
A. Well—
Q. As a group.
A. The boss told us that we should leave.
Q. Well, was there somebody else in there before that?
A. Well, I don't know. I was so excited that I don't remember.
Q. There may have been?
A. Yes, sir, there may have been, but I can't remember if anyone told me to leave or not.
Q. Was it Mr. Charles Warner?

A. I don't remember.
Q. You do not remember?
A. No.
Q. Or Fred Yaeger?
A. No.
Q. But there may have been somebody in there?
A. There may have been, yes, sir, but I can't remember now anyone being in there.
Q. Which department were you working in?
A. The Inspection Department.
Q. And how many were employed in that department, that is, how many women were employed in that department?
A. I guess there was five of us.
Q. That is you are confining it to the inspection department?
1666 A. Yes, sir.
Q. That is where you worked.
A. Yes, sir.
Q. Did you always have five women in there during the time you were employed there?
A. Well now, let me see. I believe there was only five.
Q. Well, I am not talking about that day. You said on February the 17th there were five in the department,—five women.
A. Six, or—yes, five.
Q. Now, were there always five women in there, from the time you started to work there?
A. Oh, no. There was a new girl there later on. She came to us when we had been working there for about four months, I believe, although I am not sure.
Q. Well, how long had you worked there?
A. About a year and a half.
Q. And did you work continuously, or did you have some time off?
A. No, continuously.
Q. During that year and a half, were there always five women in that department?
A. Yes.
Q. Or did the number change from time to time?
A. Well, it was always the same number.
1667 Q. How?
A. Always the same number.
Q. I did not hear.
A. Always the same number.

Q. Always the same?
A. Yes.
Q. I thought I understood you to say something about another girl coming in there.
A. Oh, there was a new girl later on. I don't know when she came there. She had not been working there very long though.
Q. Would that make it five, or six?
A. Well—
Q. When the new girl, that you speak of, came in, would that make it five or six?
A. That would make it five girls, with the new girl.
Q. Five with the new girl?
A. Yes.
Q. And before that time, then, you had how many?
A. Four.
Q. And that was true for how long a time?
A. Well—
Q. A year or more?
A. You mean, five girls?
Q. No, four girls.
A. Oh, four?
1668 Q. Yes.
A. That was for about a year, I guess.
Q. Now, you joined this union when?
A. March 3rd, 1937.
Q. March 3rd —
A. Yes.
Q. —1937.
A. Yes.
Q. So of course you did not discuss your membership in the union with anybody in the shop before the sit-down—
A. No, sir.
Q. —or the strike, did you?
A. No, sir.
Q. And you did not take part in it in any way, did you?
A. No, sir.
Q. You did not belong to it before that date?
A. No.
Q. Did you ever go back for your job?
A. No, sir. He said he was going to notify me, but I didn't go back.
Q. I see. You never made any inquiries at all about it, did you?

A. No, sir.

Q. Would you have gone back on February the 27th, or February the 28th, or March the 3rd, if you had been
1669 offered your same position?

A. No, sir, not while they were on strike.

Q. And that would be true of February 27th and February 28th also, would it not?

A. Yes, sir.

Q. Even though you did not belong to this union at that time?

A. Yes, sir, even then.

Q. So that it would have been useless to call you back, would it not?

A. Well—

Q. You would not have gone back anyway, would you?

A. No, sir, not until they recognize the union.

Q. I see.

A. Until the whole bunch goes back.

Q. Well, in February you did not belong to the union, though, did you?

A. Oh, no. That was March 3rd.

Q. Well, I say, in February you did not belong to the union, did you?

A. No.

Q. But if you had been called in February, you would not have gone back, you said.

A. No.

Q. You did not want to work, then, did you?

1670 A. No, sir, not until all of the rest of the boys went back, and the rest of the girls.

Q. I see.

A. I would be scabbing if I went back.

Q. You do not mean, the rest of the boys. You mean the rest of the girls, do you not?

A. Well—

Q. Or do you mean, the boys and girls?

A. I mean, the boys and girls—the girls and boys who joined the union.

Q. Now, so as to be sure, because I do not want to confuse you: you did not join the union until March 3rd?

A. That is right.

Q. The strike was over at that time, was it not?

A. What is that?

Q. I mean, at least, the men were out of the plant?

A. Yes.
Q. And some of them had gone back to work?
A. Yes.
Q. Yes. All right. Now, do not make a joke out of it, please, Miss Luczo. Let us be serious for a moment here.
On March 2nd you were not a member of the union, were you?
A. No.
Q. You were not a member of the union before that?
A. No.
1671 Q. But if you had been asked to go back to work at any time before March 3rd, you would not have gone back, would you?
A. No, I wouldn't.
Q. All right, and if you had been asked to go back to work after March 3rd, that would be equally true, would it not?
A. That is true.
Mr. Block: All right, that is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: Just a moment, please, Miss Luczo. I would like to ask you one or two questions.
The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Are you related to Steve Luczo?
A. That is my dad.
Q. Your father?
A. Yes, sir.
Q. He was also employed at Fansteel, was he not?
A. Yes, sir.
Q. Was he a member of the union?
A. Yes, sir.
Q. Do you know when he joined?
A. No.
Q. Pardon me?
A. No, sir, I really don't know.
1672 Q. Do you know about when he joined?
A. No, sir, I really don't know. November, I think, but I am not sure; I really don't know.
Q. He joined before the strike?
A. Yes, sir.
Q. Do you live with him?
A. Yes, sir.

Q. Is he an officer of the union?
A. No.
Q. Is he a member of any committee in the union?
A. No.
Trial Examiner Dudley: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) You are an officer of the union at the present time, are you not, Miss Luczo?
A. At the present time?
Q. Yes.
A. Yes, I am.
Q. You are the recording secretary of the union, are you not?
A. Yes, sir.
Mr. Walsh: That is all.
Mr. Block: Just a moment.

Recross Examination.

Q. (By Mr. Block.) You held no office at that time, did you?
A. No.
1673 On March 3rd.
A. No.
Q. Now, as to your father did he tell you not to go back to work?
A. No, sir, he had nothing to do with it.
Q. I see. So your decision not to go back to work—
A. Was my own.
Mr. Block: Pardon me, Miss Luczo; let me put the question please.
The Witness: Yes.
Q. (By Mr. Block.) Your decision not to go back to work during February of 1937 and thereafter, was your own decision.
A. Yes, sir
Q. Irrespective of his position?
A. Yes, sir.
Q. Or his intentions?
A. Yes, sir.
Q. That is right, is it not?
A. That is right.
Mr. Block: All right.

Redirect Examination.

Q. (By Mr. Walsh.) Do you know the date on which your father joined the union, Miss Luczo?

A. I can't remember exactly. I am not sure. I thought maybe it was in November, but I am not sure.

1674 Q. If I were to tell you that it was November the 11th, 1936—

A. I don't remember.

Q. —would that be about the date that you have in mind?

A. I don't remember what date it was.

1675 Mr. Walsh: That is all.

Trial Examiner Dudley: That is all. Thank you. (Witness excused.

Mr. Walsh: Evelyn Graimer.

EVELYN GRAIMER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Evelyn Graimer?

The Witness: Yes.

Mr. Collins: Spell your last name for the reporter, please.

The Witness: G-r-a-i-m-e-r.

Mr. Collins: Are you the wife of Phil Graimer?

The Witness: I am.

Mr. Collins: Have you been subpoenaed to appear here today before the examiner?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, I wish to claim her privilege under section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address, Mrs. Graimer?

A. 1424 Lincoln Street, North Chicago, Illinois.

Q. How long have you been employed by Fansteel?

1676 A. 8 years.

Q. What was your job?

A. Assembling contact points.

Q. That is in the Contact Department?

A. Yes.
Q. When did you join the union?
A. In August 1936.
Q. What was your hourly rate of pay?
A. 40 cents.
Q. You worked 40 hours per week, did you?
A. Yes, sir; but I worked on piecework.
Q. You worked on piecework.
A. Yes, sir.
Q. How much did you earn per hour at your piecework rate?
A. Around 52 cents.
Q. How much did your weekly pay amount to?
A. It would average between $20 and $21.
Q. Now, how much money have you earned since February 26th, 1937?
A. I haven't earned any.
Q. When did you get your last pay from the company?
A. March 5th.
Q. Did they take up your pass at that time?
A. No, they didn't.
Q. Did you talk to anybody about returning to work?
1677 A. No, I haven't.
Q. Did you make any application to return to work?
A. No.
Q. Now, during the time that you worked at Fansteel, have you received raises from time to time?
A. Yes, sir; we had raises on certain jobs.
Q. They changed the rate of pay—
A. Yes.
Q. —for certain jobs; is that right?
A. Yes.
Q. During the time you worked for Fansteel, have you ever been criticized for the way in which you did your work?
A. Never, no.
Q. Who was your forelady, or who was the foreman in that department?
A. Dean Bennett was the foreman.
Q. Who is Dean Bennett?
A. Dean Bennett?
Q. Yes. That is a man?
A. Yes.
Q. Did he ever criticize you for the way in which you did your work?
A. No.

Q. Did you do about as much work as any of the other girls in that department, or more work than any of the other girls?

1678 A. I think I done as much.

Q. Did you make the standard that was set by the company?

A. Yes, sir.

Q. Now, at the time the trouble broke out, on February 17th, did you leave the building?

A. Yes, sir.

Q. Who told you to leave the building?

A. Well, Luther Henry told us we should go home.

Q. And did he tell you he would call you when the trouble was over?

A. Well, he called that night, and he said he would let us know—notify us when he wanted us back.

Q. And you have never been called back to work?

A. No.

Now, during the progress of the strike, your husband was engaged in the strike, was he not?

A. Yes.

Q. Was he in the plant?

A. Yes.

Q. Did you do anything to help him stay in the plant?

A. I took some clothing down to him.

Q. Did you take any blankets—

A. Yes.

Q. —or other stuff?

A. I took a blanket.

1679 Q. Did you ever go on the picket line?

A. No, I never did.

Q. Did Dean Bennett know that you were a member of the union?

A. No, I don't think he did.

Q. Did you ever discuss that with any of the bosses there?

A. No.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Mrs. Graimer, your husband worked for the Fansteel Company in February, did he not?

A. Yes, sir.

Q. You worked for the Fansteel Company?

A. Yes.
Q. How long had he been employed there?
A. I think about 18 years.
Q. And how long had you been working there?
A. 8 years.
Q. Then you joined the union—when?
A. August.
Q. Of 1936?
A. Yes.
Q. That is right, is it?
A. Yes, sir.
Q. And on February 17th, when you were told, as you said, by Mr. Henry to leave the building, where were you?
1680 A. We were coming out.
Q. You were coming out?
A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. Why?
A. Well, everybody got up to go out, and they told the girls they might as well go home.
Q. I see. Well, somebody had been in there, had they, and told them to go out?
A. I don't know who they were.
Q. No, I am not asking who they were; but I say, irrespective of who they were, before Mr. Henry said anything to you about it, there were some employees in there, who came in there and told you women, or ladies, or girls, whichever you prefer me to call you, to leave the building?
A. Yes.
Q. That is a fact, is it not?
A. Pardon me?
Q. I say, that is a fact?
A. Yes, sir.
Q. Now, those particular parties were members of the union, were they not?
A. I think so.
Q. They were members of a committee of the union,
1681 were they not?
A. I think they were.
Q. Yes. Did you know them?
A. I don't remember who it was.
Q. Now, you do not remember now who it was, but you knew them then, did you not?

A. Yes.
Q. And they were members of your union?
A. Yes.
Q. What did they say?
A. I don't remember. They just said that the women should go home.
Q. How?
A. That the women should go home.
Q. That the women should go home.
A. Yes.
Q. This was during working hours?
A. Yes, sir.
Q. About 2:30 in the afternoon?
A. Around that, yes.
Q. And there were about 50 women in there, would you say?
A. 50 or 55.
Q. Something like that?
A. Around there.
Q. And those men, whoever they were, and whatever
1682 the number of men, told you all to go home?
A. Yes, sir.
Q. What were you working on?
A. Assembling contact points.
Q. All right. Thereupon the 55 women quit their work?
A. Yes.
Q. Dropped their work, and left the building?
A. Yes, sir. First they all started talking, and then they went out.
Q. Now, it is not true that Mr. Henry first told you women, or ladies, to leave the building, is it?
A. No, but he came in, and he says, "You might as well go home."
Q. Yes. But that was after these other men had talked to you, and told you to leave the building, was it not?
A. Yes, sir.
Q. That is true, is it not?
A. Yes, sir.
Q. And then he said, "Well, you might as well go home"?
A. Yes, sir.
Q. What building was that, by the way?
A. 3.
Q. Building 3.
A. Yes.

Q. And then did you leave the building immediately,
1683 or did you—

A. Yes, we went right out.

Q. You did not go back, then, after that, did you?

A. No, I never went back.

Q Now, during the time that you have been employed there, did you always have about 50 or 55 women, whatever the number was, in that department?

A. No.

Q. Or did it change from time to time?

A. They changed.

Q. They did change?

A. Yes.

Q. And that happened from time to time; there were less employees, and more employees?

A. Yes.

Q. In that department?

A. Yes, it changed.

Q. Sometimes there was more work, and sometimes there was less work; is that not correct?

A. Yes, sir.

Q. And some would be laid off?

A. Yes.

Q. And some would not be?

A. Yes.

Q. That is a fact, is it not?

1684 A. Yes, sir.

Q. Now, then, your husband was one of the men who remained in one of the buildings during this entire period from February 17th to February 26th, inclusive, was he not?

A. Yes, sir.

Q. And during that time you knew, of course, that there had been an injunction issued by the Circuit Court of Lake County, by Judge Dady?

A. Yes.

Q. And you knew that your husband was in there?

A. Yes, sir.

Q. And after you had learned that, you took certain articles down there for him, or for his use, did you not?

A. Yes, I did.

Q. And you, I suppose, went down there, from day to day, to see how they were doing?

A. Yes, sir.

Q. To see how the boys were getting along?

Q. Did you talk with any of the men in the buildings when you were down there?

A. Well, they were all hollering out there, but I didn't talk to any one in particular.

Trial Examiner Dudley: That is all. Thank you.

Mr. Block: Just one more question.

Recross Examination.

Q. (By Mr. Block.) No one connected with the management ever discussed the union with you at all?

A. No, sir.

Q. Or your joining the union?

1661 A. No, sir.

Mr. Block: That is all.

Mr. Walsh: That is all; thank you.

(Witness excused.)

Mr. Walsh: Bessie Luczo.

BESSIE LUCZO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Bessie Luczo?

The Witness: Yes, sir.

Mr. Collins: Will you spell your last name for the reporter, please.

The Witness: L-u-c-z-o.

Mr. Collins: Were you served with a subpoena to appear before the Examiner here today?

The Witness: Yes, I was.

Mr. Collins: I would like on behalf of the witness to claim her privilege, if the Examiner please, under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 2303 Christian Avenue, North Chicago, Illinois.

Q. How long were you employed by Fansteel?

A. Oh, about a year and a half.

Q. What was your job?

1662 A. Inspecting wire.
Q. In the wire department?
A. Yes, sir.
Q. What was your rate of pay?
A. 40 cents per hour.
Q. And you worked 40 hours per week, did you?
A. Yes, sir.
Q. What did your weekly pay amount to?
A. Oh, it would average about $16.
Q. When did you draw your last pay?
A. Around February the 28th.
Q. Did the company take up your pass at that time?
A. No.
Q. Did they ask you for your pass?
A. No.
Q. How much have you earned since February the 26th, 1937?
A. $20.
Q. And what did you do to earn that money?
A. Housework.
Q. Do you normally work for pay outside, or in your spare time, when you are employed by Fansteel?
A. No, sir.
Q. Now, at the time the trouble broke out on the 17th of February, 1937, were you in the plant?
A. Yes, sir.
1663 Q. Did you leave the plant when the trouble started?
A. Yes, sir, and before I left the plant my boss, he says, "Give me your phone number" and he says that he will notify us when he wants us back.
Q. I see. Now, while the strike was in progress, did you take any active part in it?
A. Do you mean, to help bring food to them, or something like that?
Q. Yes.
A. No.
Q. During the time you were working for the company, did anybody criticize the way in which you did your work?
A. No, sir, never.
Q. Did you receive any raises, during the time you were working there?
A. Well, there was two raises. The first, I was getting 30 cents per hour, and then I got a nickel raise to 35 cents; and then there was another 5 cents raise during the time—when they were signing up for the union.

A. Yes, sir.
Q. If any occasion arose where they needed any assistance from the women, you rendered such assistance?
A. No, sir; I didn't. I just took the clothes down there.
Q. You just took the clothes down.
A. Yes.
Q. Any other articles?
1685 A. How?
Q. Did you take any other articles?
A. A blanket.
Q. I suppose you did not attempt to discourage the men in there, did you?
A. No, I didn't say nothing to them.
Q. You did not ask your husband to come home?
A. No, I didn't say nothing.
Q. And you never went back to get your job back, did you?
A. No.
Q. You never entered upon the Fansteel premises after that, did you?
A. No, sir.
Q. If they had tendered you employment of the same kind and character that you had before February 17, 1937, you would not have accepted it, would you?
A. No, sir; not unless they recognized the union.
Q. In other words, you attached some conditions to it?
A. How is that?
Q. You were attaching certain conditions to it?
A. Yes; if they recognized the union—
Q. Yes.
A. —and they all went back.
Q. Otherwise you would not have gone back, would you?
A. No.
1686 Q. Under any conditions?
A. No.
Mr. Block: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Did you see that advertisement in the paper, Mrs. Graimer?
A. Yes, sir.
Q. Do you remember what day that appeared?
A. It was a couple of weeks after the fellows came out.
Q. That was in the Waukegan—

A. Sun.
Q. News-Sun, or Sun, whatever it is.
A. Sun.
Mr. Walsh: That is all.
Mr. Block: Pardon me just a moment.

Recross Examination.

Q. (By Mr. Block.) This article which you say you read in the newspaper, was one which appeared in the Waukegan paper?
A. Yes, sir.
Q. Do you remember what it said about employees returning to work?
A. Well, it said that if they came back they would get 10 days' pay.
Q. You read that, did you?
A. Yes, sir.
1687 Q. And you did not go back?
A. No, sir.
Q. When did you read this article, by the way?
A. Well, I think it was 2 weeks after the fellows were out of there.
Q. That would be about 2 weeks—
A. Or 3.
Q. (Continuing) —after February 27th or February 26th 1937?
A. Yes, sir.
Q. Now, Mrs. Graimer, after you read that article, I suppose you discussed it with others, did you?
A. I didn't discuss it, no.
Q. You did not?
A. Just at home.
Q. Pardon me?
A. Just with those at home.
Q. Yes. Well, when you read that article, you considered that as an offer to reemploy you, did you not?
A. Yes, sir.
Q. And you refused it?
A. Yes, sir.
Mr. Block: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down. Thank you very much.

1688 (Witness excused.)

Mr. Walsh: Vivian Johnson. Is Vivian Johnson here?

(No response.)

Mr. Walsh: Tillie Mesec. This witness has not been sworn, if the Examiner please.

TILLIE MESEC, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Tillie Mesec?

The Witness: Yes.

Mr. Collins: Will you spell your last name for the reporter, please?

The Witness: M-e-s-e-c.

Mr. Collins: Were you subpoenaed to appear here before the Examiner today?

The Witness: Yes, sir.

Mr. Collins: If the Examiner please, on behalf of the witness, I would like to claim her privilege under section 11, paragraph 3, of the National Labor Relations Act?

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 1031 McAllister Avenue, North Chicago, Illinois.

Q. How long have you been employed by Fansteel?

A. 2 years.

Q. What is your job?

1689 A. Inspection, in the Contact Department.

Q. When did you join the union?

A. November 1936.

Q. What is your hourly rate of pay?

A. 42 cents per hour.

Q. And did you work 40 hours per week?

A. Yes, sir.

Q. What did your weekly pay amount to?

A. $16.80.

Q. How much money have you earned since February 26, 1937?

A. About $24.

Q. What were you doing?
A. Housework.
Q. Normally, when you are employed at Fansteel, do you do any work on the outside for pay?
A. No, sir.
Q. When did you get your last check from the company?
A. About the middle part of April.
Q. About the middle of April?
A. Yes, sir.
Q. And did they take up your pass at that time?
A. Well, they asked me for it, but I didn't have it with me at that time.
Q. Did you talk to anybody about going back to work?
A. I was called back.
1690 Q. Oh, you were called back?
A. Yes.
Q. And did you go back to work?
A. No, I didn't.
Q. Why did you not return to work?
A. I wouldn't return to work unless they recognized the union.
Q. Well, did they offer you the same job that you had, back there?
A. Yes, sir.
Q. At the same rate of pay?
A. Well, Mary Atkinson told another girl to come and tell me about it, and she didn't say what job I would get.
Q. I see. Mary Atkinson is the forelady in your department, is she?
A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Miss Mesec—is it Miss Mesec?
A. Yes, sir.
Q. How long have you worked for the company?
A. 2 years.
Q. Were you working there steadily?
A. Yes, sir.
Q. Now, how many were there in your department; how many women?
1691 A. About 20.
Q. About 20?

A. Yes.
Q. Did that number change from time to time?
A. Yes, sir.
Q. On Februa.y 17th, you were employed there?
A. Yes, sir.
Q. In the performance of your usual duties?
A. Yes, sir.
Q. Did somebody tell you to leave the building?
A. Yes.
Q. Who?
A. Luther Henry.
Q. Who, if anyone, said anything about the subject of leaving the building, before Luther Henry spoke of it?
A. Well, I don't remember.
Q. You do not remember those men?
A. No, I don't.
Q. Well, let us get that. You mean that there was someone there, who came in and asked the women, or told the women—
A. Yes.
Q. —to leave the building; is that correct?
A. Yes, sir.
Q. That was not Mr. Henry?
A. No, sir.
1692 Q. Well, now, was that one man, or was it two or three men, or a group of men, or who was it?
A. Well, I don't remember any more. I can't say.
Q. No, but you were there?
A. Yes, sir.
Q. And they were members of the union that you belonged to, were they not?
A. I imagine they were.
Q. They were employees also, were they not?
A. Yes, sir.
Q. They were not officials or foremen?
A. No, sir.
Q. That is right, is it?
A. Yes, sir.
Q. Now, then, after these men instructed you to leave, that is when the women left?
A. Yes, sir.
Q. Or started to leave?
A. Yes, sir.
Q. And it was after that time that you had the conversa-

tion with Mr. Henry, or when Mr. Henry said, "Well, you might as well go home"?

A. Right.

Q. Is that a fact?

A. Yes, sir.

1693 Q. Mr. Henry did not discharge you, did he?

A. No, sir.

Q. He did not tell you to quit work, did he?

A. No.

Q. You never were discharged, were you?

A. No, sir.

Q. You never went back to work?

A. No, sir.

Q. And you were offered employment?

A. Yes, sir.

Q. Through somebody?

A. Yes, sir; I was.

Q. But you never returned?

A. No, sir.

Q. And you never offered to return?

A. No, sir.

Q. You would not have returned if the offer had been repeated to you, would you?

A. No.

Q. You had no trouble with your forelady, did you?

A. No.

Q. Before that time?

A. No, sir.

Q. You liked your job, did you not?

A. Yes, sir.

1694 Q. You were perfectly satisfied?

A. Yes, sir.

Mr. Block: That is all.

Mr. Walsh: Just a moment, please.

Redirect Examination.

Q. (By Mr. Walsh.) While you were there, had they ever criticized you for the way you did your work?

A. No, sir.

Q. Did you make the standard that was set by the company, every day?

A. I was doing day work.

Q. You were doing day work.

A. Yes, sir.
Mr. Walsh: That is all.
Mr. Block: Nothing further.
Trial Examiner Dudley: That is all. Thank you.
(Witness excused.)
Mr. Keele: If the examiner please, I wonder if we might at this time suggest we shall probably desire to recall three of these girls, Frances Fellens, Marguerite Seifert, and Elizabeth Luczo. Might they be instructed to wait, until you have finished putting in this phase of your case?
Mr. Walsh: Yes.
Mr. Keele: If that may be done, Mr. Examiner?
Trial Examiner Dudley: Did they hear the names?
1695 I think they are all here. Fern Gartley, Frances Fellens, Marguerite Seifert, Elizabeth Luczo—no, you do not need to come forward now. Just wait a little while.
Mr. Walsh: Yes, just wait.
Now, let us have Isabella Recktenwald. Will you swear the witness, please, your Honor.

ISABELLA RECKTENWALD, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Isabella Recktenwald?
The Witness: Yes.
Mr. Collins: Will you spell your last name for the reporter, please?
The Witness: R-e-c-k-t-e-n-w-a-l-d.
Mr. Collins: Were you served with a subpoena, Miss Recktenwald, to appear before the examiner here today?
The Witness: Yes, sir.
Mr. Collins: On behalf of the witness, if the examiner please, I would like to claim her privilege under section 11, paragraph 3, of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. 522 South Utica Street, Waukegan, Illinois.
Q. A little louder, please.
1696 A. 522 South Utica, Waukegan.

Q. How long were you employed by Fansteel?
A. About 2 years.
Q. What was your job?
A. Disk inspector in the Contact Department.
Q. When did you join the union?
A. In November of 1936.
Q. What was your hourly rate of pay?
A. 42 cents per hour.
Q. 40 hours per week?
A. Yes, sir.
Q. How much did that amount to per week?
A. $16.80.
Q. How much money have you earned since February 26th, 1937?
A. None.
Q. None?
A. Nothing.
Q. When did you draw your last pay from the company?
A. On March 5th.
Q. I did not hear.
A. March 5th.
Q. Did you turn in your pass at that time?
A. Well, another girl got my check for me.
Q. I see.
A. Because I was out of town at the time; but no-
1697 body ever asked me for my pass.
Q. Have you been called to return to work?
A. Yes, sir.
Q. You refused to return to work?
A. Yes, sir.
Q. Unless the company met certain conditions; is that right?
A. Yes, sir.
Q. What are those conditions?
A. Recognition of the union.
Q. And to take back the people who are outside; is that right?
A. Yes, sir.
Q. At the time you worked there, did anybody find any fault with your work?
A. No, sir.
Q. Do you know whether they knew you were a member of the union?
A. I don't know.

Q. Did you take any part in the strike activities of the union?

A. No, I didn't.

Q. Did you help put any food into the plant?

A. No, sir.

Q. Did you go on the picket line, or anything?

A. No, sir; I didn't.

1698 Q. Who was your forelady?

A. Mary Atkinson.

Q. Is she the one who called you to return to work?

A. No, she isn't.

Q. Did she have someone else call you?

A. Well, Mr. Schultz had the office girl call me and ask me to come in and sign up, or make out a new application.

Q. When did that happen?

A. Oh, about 2 weeks after they started working there.

Q. That would be about 2 weeks after the 26th or 27th of February, would it?

A. About 2 weeks after the 26th or 27th of February; yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Miss Recktenwald, you had been an employee of the Fansteel Company for some time prior to February 17th, 1937, had you not?

A. Yes, sir.

Q. And on that day you personally had no difficulty with the company, did you?

A. No.

Q. Nor its officers?

A. No.

Q. Or your forelady?

A. No, sir.

1699 Q. And you were engaged in the performance of your duties at the time you were ordered out of the building, were you?

A. Yes, sir.

Q. And you were ordered out of the building, I assume, by the same group whom some of these other ladies have already mentioned?

A. Yes, sir.

Q. That is, not by the management—
A. No.
Q. —but by some committee of the union?
A. Yes.
Q. That is a fact, is it not?
A. Yes, sir.
Q. Pardon me?
A. That is correct.
Q. That is the fact.
A. Yes.
Q. And thereupon you stopped work?
A. Yes, sir.
Q. And you left the building?
A. I did.
Q. And then you were told that as soon as you were needed, as soon as your services were needed, you would be notified to return?
A. No, nobody told me anything.
1700 Q. You were not told that?
A. No.
Q. I see. You are sure you were not told anything?
A. No, sir; I was just told to go home.
Q. I see.
A. So I did.
Q. And after February 27th, the forelady called you, did she?
A. No.
Q. Somebody else did?
A. It was somebody else.
Q. Well, let us shorten it up. You were requested to come back to work, were you not?
A. Yes, sir.
Q. Now, up to that time, you had not been discharged, had you?
A. No, sir; I hadn't.
Q. That is, no one in the plant, or your forelady, said, "Now, here, we won't need you any more; we won't need your services any more," or anything like that?
A. No, sir; nothing was said to me.
Q. You left because you were ordered out of the building by those men you have told us about?
A. Yes, sir; that is right.
Q. You never were discharged, were you?
1701 A. No, sir.

Q. And then when you were offered employment, you said, "I won't go back", did you not?
A. That is right.
Q. In effect, "except under certain conditions"?
A. Yes, sir.
Q. And you never did go back?
A. No, I didn't.
Q. And you would not have gone back unless certain conditions which you had in mind, and to which attention has been called, were complied with?
A. Yes.
Q. That is the fact, is it not?
A. Yes, sir.
Q. That tells the story?
A. Yes, sir.
Mr. Block: All right.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: Just a moment.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) I have just one or two questions I want to ask you. Do you know who the girl was, the office girl, who you say called you?
A. I think it was Miss Lane, but I am not sure.
Q. Do you know when it was she called you?
1702 Well, I think it was about 2 weeks after they started to work there.
Q. Do you know if she worked in Mr. Schultz's office?
A. I couldn't say.
Q. Did she say to you that Mr. Schultz had told her to call you?
A. Yes, sir.
Q. Did she say as to whether you would get the same job back, if you went back?
A. No, sir; she didn't. She just stated that I was to come down and make out a new application.
Q. Did she say that you would get the same job if you made out a new application?
A. No.
Q. Did you see this notice in the newspaper?
A. No, I didn't.
Mr. Block: May I ask another question right there, if the examiner please?

Trial Examiner Dudley: Yes.

Q. (By Mr. Block.) You never went down there to find out what was wanted of you, after that call, did you?

A. No, sir; I didn't.

Q. And you would not have gone back, even though they had offered you the same position, at the same amount of pay, the same employment that you had before, would you?

1703 A. No, sir; I wouldn't.

Q. That is true, is it not?

A. Yes, that is true.

Mr. Block: All right.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you very much.

(Witness excused.)

Mr. Walsh: I have no more girls to put on at this time.

Mr. Block: Are you through with that group?

Mr. Walsh: I have run out of girls.

Mr. Keele: Then let us put the others back on just briefly at this time.

Mr. Walsh: That is all right.

Mr. Keele: To keep the record straight.

Mr. Walsh: All right. You recall them.

Mr. Keele: Fern Gartley.

FERN GARTLEY, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Keele.) You are the same Fern Gartley who was sworn and testified here a few moments ago, are you not?

A. Yes, sir.

Q. Did you see the advertisement in the paper with reference to the offer of the company to reemploy?

1704 A. Yes, sir.

Q. (Continuing)—all employees returning before such and such a time, or in such and such a period?

A. Yes, sir.

Q. Or, rather, to pay them for their back time?

A. Yes.

Q. If they came back to work?
A. Yes, sir.
Q. You talked with somebody about that, did you not?
A. I talked to the forelady.
Q. You understood that that was an offer to you by the company; did you not?
A. Yes, indeed. That is why I called up.
Q. For you to return?
A. Yes, sir.
Q. And to continue to draw your pay throughout that period, if you came back to work?
A. Yes, sir.
Q. But you did not go back to work, did you?
A. No, sir; I did not. She said that she had got somebody.
Q. So that, as a matter of fact, you never were discharged, were you?
A. No, I wasn't.
Mr. Keele: That is all.
Trial Examiner Dudley: Well, now, wait a moment.

1705 *Examination by Trial Examiner Dudley.*

Q. (By Trial Examiner Dudley.) As I remember it, Miss Gartley, you testified when you were on the stand before that when you saw the notice in the newspaper, you understood that was an offer.
A. Yes, sir.
Q. And you called your forelady?
A. Yes, sir.
Q. And she said that she had somebody else.
A. Yes.
Q. In your place.
A. Yes, sir.
Q. And then she did not want you to come back?
A. She said she would take me on later on.
Q. She said that she would take you on later on?
A. Yes, sir; but she never called.
Q. Did she say that she would let you know when she would take you on, later on?
A. No, sir; she didn't. She just said that she had somebody at the present time, and she would take me on later on.
Mr. Keele: May I ask another question, if the examiner please?

Q. (By Mr. Keele.) How long did you wait after you saw that advertisement in the newspaper, if at all?

A. It said that you were supposed to call them in-
1706 side of a week, I guess it was, and I waited until the last day.

Q. You waited until the last day?

A. Yes, sir.

Q. Why did you wait until the last day?

A. I didn't know if I wanted to go back or not.

Q. You did not know whether you wanted to go back or not?

A. No, sir.

Q. So that you do not know but what, if you had called the first day of that week, you would have gotten your reemployment, or continued your reemployment, is that not a fact?

A. Well, I asked her, and she said that she had somebody just then.

Q. Yes, but that was the last day?

A. Yes.

Q. That the offer was good?

A. Yes.

Q. When you asked her?

A. Yes, sir.

Q. The offer said on or before what date?

A. It gave about a week's time, I guess.

Q. But whatever it was, you waited until the very last day, you say?

A. Yes, sir. Well, it was a couple of days, I guess it was, before that, because it was supposed to be Saturday, I guess it was, the last day; and I called about Thursday.

1707 Q. Well, which story is right?

A. Well, it was Thursday, that I called. I guess Saturday was the last day.

Q. Then you did call on Thursday?

A. Yes.

Q. And not Saturday?

A. Yes.

Mr. Keele: All right.

Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh.) They have never called you since that time, have they, Miss Gartley?

A. No, they have not.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all. Witness excused.

(Witness excused.)

Mr. Keele: Frances Fellens.

FRANCES FELLENS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Keele.) You are the same Miss Fellens who was sworn here, and testified a little while ago, are you?

A. Yes, sir.

Q. Did you see that advertisement in the paper?

A. I knew it was there, but I didn't read it.

1708 Q. Oh, you heard about it?

A. Yes, sir.

Q. You understood it to mean that anyone who returned before a certain date, the date being specified in the advertisement, would receive his or her pay right on throughout the time that the plant was closed, did you not?

A. Yes, sir. That is the way I thought it was.

Q. I did not hear.

A. That is the way I thought it was.

Q. Yes. And you would continue right on working?

A. Yes, sir.

Q. Steadily?

A. Yes, sir.

Q. You did not ask them to reinstate you when you went back there and got that red card, did you?

A. No.

Q. And, as a matter of fact, you told Mr. Block a little while ago that you would not have gone back to work, did you not?

A. No, I wouldn't.

Q. You would not have, would you?

A. No.
Q. So that you were never discharged?
A. No.
Q. You did receive an offer from the company,
1709 through the newspaper, to continue your employment; is that not true?
A. I don't know whether that offer was directed to me, or not.
Q. It was directed to all of the employees, was it not?
A. I wouldn't say if it was all of the employees or not. I didn't read it.
Q. Well, that was your understanding of it, was it not?
A. I imagine that is what it meant.
Q. Well, that was your understanding, was it not?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down. Thank you.
(Witness excused.)
Mr. Keele: Marguerite Seifert.

MARGUERITE SEIFERT, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Keele.) You are the same Marguerite Seifert who was sworn here, and testified a few moments ago, are you not?
A. Yes, sir.
Q. By the way, is it Miss, or Mrs.?
A. Miss.
Q. Miss Seifert.
1710 A. Yes, sir.
Q. Did you see that article, or that advertisement, in the newspaper, or did you hear about it?
A. I heard something about it, yes, sir; I heard different people talking about it; but I didn't read it.
Q. I see. But you understood that the company had offered to anyone who came back there by a certain time—
A. Well, I didn't know if it was meant for us or not, or who it was meant for.
Q. Well, what was there about the ad that you did not understand? It certainly was not meant for the employees of the Johns-Manville Company, was it?

A. Well, on the 17th, I think it was, Schultz called me up about 11 o'clock at night, and told me that they would call me back when they needed me.

Q. All right. And then subsequently thereto, after that time, this advertisement was run in the newspaper, was it not?

A. Well, I didn't read it.

Q. No, but you heard about it, did you not?

A. (No answer.)

Q. You heard about it?

A. Yes.

Q. And you had a discussion about it, did you not?

A. Well, I didn't know if it was—

Q. Answer my question "yes" or "no", please, Miss
1711 Seifert. There was a discussion about it, was there not? You just told us that you heard about it.

A. (No answer.)

Q. How did you hear about it?

A. Oh, I heard different women in the neighborhood talking about it.

Q. Yes. And it was stated, was it not, that apparently that was an offer of the company, that anybody who came back before a certain time would receive his money for the period that they were out of the factory; that is true, is it not?

A. Well, not exactly; no, sir. I didn't hear that.

Q. Well, then, just tell us what you did hear.

A. Just that anybody that wanted to go back could go back.

Q. All right.

A. I don't recall anything about money.

Q. That anybody that wanted to go back could go back?

A. Yes.

Q. That was the substance of it—

A. Yes.

Q. —is that right?

A. Well,—

Q. Well, now, that is what you just told me, is it not?

A. Something to that effect.

Q. Yes. That is what they were talking about, isn't it?

A. Yes, that is what they were talking about.

1712 Q. All right. You understood that that meant that you and all the others could go back, did you not?

A. Well, but they didn't recognize the union, or anything.

Q. Just answer my question, please, and then you can make any speech that the examiner will permit you to make. But I would like to have a direct answer to my question.

Mr. Walsh: Well, now,—

Q. (By Mr. Keele.) You understood that that meant that if you wanted to go back, you could go back, did you not?

A. Well, I didn't.

Q. "Yes" or "no"?

A. No.

Q. You did not understand that?

A. No.

Q. All right. Then what did you understand by that offer?

A. Well, I thought it was for the outsiders, that did not join the union, because I was still waiting for that telephone call.

Q. Was it limited to outsiders?

A. (No answer.)

Q. Did it say, those outside the union? That was not the way you understood it, from the women who were talking about it, was it?

A. Well, they didn't say very much about it, but that is the way I thought it was.

1713 Q. In other words, you felt that you ought to get special attention?

A. As long as they called me, I thought that they would recall me back on the telephone.

Q. And the fact that it appeared in the newspaper, you did not think was sufficient?

A Well, you can't believe everything that you see in the newspapers.

Q. Nor what you hear on the telephone; that is right, is it not?

A. Well, it was the factory called me.

Q. It was what?

A. It was from the factory.

Q. You need the factory to take care of you, then.

A. Sometimes.

Q. Sometimes.

A. Yes, sir.

Q. Well, now, let us get away from this funny-strip business, and see if we cannot develop some of the facts here.

What I want to know is this: you felt, even after you heard

about that advertisement that was in the paper, that was not sufficient; is that correct?

A. Well—

Q. (Continuing.) To warrant you in believing you could get your job back, or continue in it?

1714 A. They were not doing justice to the union.

Q. Well, then, you did not want to go back; is that correct?

A. If all of the rest of them were taken back, I would go back.

Q. And if they had called you on the telephone, and told you to come back, you would not have gone back,—

A. No.

Q. —without certain conditions being fulfiled; is that right?

A. Yes.

Q. You were never discharged, were you?

A. No.

Q. And you had a chance to go back?

A. Yes.

Q. You have heard that, have you not, through the newspaper—you heard it there, and from other people?

A. Through other people.

Q. But you did not want to go back without the company fulfilling certain conditions, did you?

A. No.

Q. Now, that is the fact, is it not?

A. Yes, sir.

Mr. Keele: All right.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: You are excused. Thank you.

1715 (Witness excused.)

Mr. Keele: Miss Luczo.

BESSIE LUCZO, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Cont'd).

Q. (By Mr. Keele.) You are the same Bessie Luczo who was sworn here, and testified a little while ago, are you not?
A. Yes, sir.
Q. Did you read that article, or that advertisement in the newspaper?
A. I don't recall.
Q. Well, I assume that you heard the discussion that has gone on here with the preceding witnesses—did you not?
A. I was here, yes, sir, but I wasn't paying very much attention to it.
Q. I see. Did you read an article in the paper with reference to the fact that the company would re-employ those, or would continue the employment of those who came back before a certain time?
A. No, I never read that.
Q. Did you hear about it?
A. Hear about it?
Q. Yes.
A. Not that I remember of.
1716 Q. You do not recall?
A. No, sir—do you mean, about getting back pay if they would go back to work?
Q. Something like that.
A. No.
Q. You did not even hear about that?
A. No, sir, not that I remember of.
Q. Well, you would not say that you did not read it, or hear of it, would you?
A. I can't remember if I did or not.
Q. You just do not remember?
A. No.
Q. You are sure that you did not make up your mind as to what your testimony would be, while you were sitting there listening, are you?
A. Yes, sir.
Q. You are sure of that?
A. Yes.

Q. You did not make any statement to anybody back there as to what you would say when you came back on the witness stand?

A. No, sir.

Q. You cannot remember, one way or the other?

A. No, sir. I didn't read that article.

Q. Well, did you hear any discussion about it?

A. No. sir.

1717 Q. Are you sure of that?

A. I am sure of that.

Q. If you had read that article, you would not have gone back to work, would you?

A. No.

Q. All right. You were never discharged, were you?

A. Not that I know of.

Q. Well, one usually learns of those things, don't you think?

A. No one said I was discharged.

Q. You just did not go back to work.

A. No. They said they would notify me.

Q. I see. And you heard nothing about it.

A. That is right.

Q. You still want to stand by that statement, that you heard nothing about this article in the paper, do you?

A. No, I didn't.

Q. And talked to no one about it.

A. No.

Mr. Keele: All right. That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down; thank you very much.

(Witness excused.)

Mr. Keele: Recall Miss Tilly Mesec for a moment.

TILLIE MESEC, recalled as a witness for the National
1718 Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Con't).

Q. (By Mr. Keele.) Miss Mesec, you are the same lady who was sworn here a few moments ago, and testified, are you not?

A. Yes, sir.

Q. I have forgotten now. Did Mr. Block examine you with reference to the article that appeared in the paper?

A. No, sir.

Q. Did you see that article that appeared in the newspaper?

A. Yes.

Q. Or that advertisement.

A. Yes, sir.

Q. What did it say?

A. Well—

Q. What was the substance of it?

A. About giving back wages.

Q. For everybody who came back?

A. Yes, sir.

Q. And applied—and for everybody who came to the factory to work before a certain date, as therein specified?

A. Yes, sir.

Q. You understood by that, that if you went back, you would receive wages for all of the time that you were out, did you not?

1719 A. Yes, sir.

Q. You were not discharged, were you?

A. No, sir.

Q. And you never have been discharged by the company, have you?

A. No, sir.

Q. In that advertisement, an offer as you understood it was made, to go back to work, was it not?

A. Yes.

Q. It was an offer from the company to you, to go back to work, was it not?

A. Yes.

Q. And you chose to do so?
A. Yes, sir.
Q. And receive your pay, right straight through?
A. Yes.
Q. But you did not want to do that, did you?
A. No.
Mr. Keele: All right.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: Vivian Johnson. Will you swear this witness, if the Examiner please.

VIVIAN JOHNSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

1720 Mr. Collins: Your name is Vivian Johnson?
The Witness: Yes, sir.
Mr. Collins: Have you been served with a subpoena, just a few moments ago, to appear here before the Examiner?
The Witness: Yes, sir.
Mr. Collins: If the Examiner please, on behalf of the witness I would like to claim her privilege under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
A. 316 North Butterick.
Q. Waukegan?
A. Yes, sir.
Q. How long have you been employed by Fansteel?
A. Two years.
Q. On what job?
A. Inspector.
Q. In the Contact Department?
A. Yes, sir.
Q. What was your hourly rate of pay?
A. 42 cents per hour.
Q. And you worked 40 hours per week?
A. Well, we mostly worked overtime.
Q. What was your average weekly pay?
1721 A. About $17 or $18 a week.

Q. $17 or $18?
A. Yes, sir. I don't know exactly, except we never worked the regular hours, you see.
Q. When did you draw your last pay?
A. March 5th.
Q. Did the company take up your pass at that time?
A. No, sir.
Q. Did you talk to anybody about returning to work?
A. No, sir, I didn't.
Q. When did you join the union?
A. Last November.
Q. 1936?
A. Yes, sir.
Q. Have you been offered re-employment by the company since it opened up again?
A. No, sir.
Q. How much money have you earned since February the 26th, 1937?
A. I just started working this week.
Q. How much are you earning per week now?
A. $12 a week.
Q. What are you doing?
A. Stenographer.
Q. When you worked at the Fansteel Company, did you do any work on the outside for pay?
1722 A. No.
Q. During the time you were working there, did anybody with the company ever criticise you for the way in which you were doing your work?
A. No, sir; not right out.
Q. Not right out?
A. No.
Q. Who was your foreman, or forelady?
A. Mary Atkinson.
Q. Did Miss Atkinson know you were a member of the union?
A. I don't know whether she did or not.
Q. Did you ever talk to her about it?
A. No.
Q. Did you receive any raises while you worked with the company?
A. Yes, I had two raises.
Q. One of them I suppose was the general raise?
A. Yes.
Q. Which you got in November of last year?

A. Yes, sir.
Q. When did the other raise come about?
A. Well, we got a raise—we get a raise after we have worked so long; then we get a three cent raise.
Q. How much was the raise you had?
A. Three cents, I believe.
Q. How much?
1723 A. Three cents.
Q. Per hour?
A. Yes, sir.
Q. And the November raise which you received, was five cents per hour, was it not?
A. Yes, sir.
Q. Did you read the advertisement which appeared in the newspaper?
A. No, but I heard about it.
Q. When did you hear about it?
A. The next day after it was printed.
Q. Who told you about it?
A. My girl friend.
Q. Did you return to the company in response to that advertisement?
A. No.
Q. Did you feel that you would not go back unless the company complied with certain conditions?
A. Yes, sir.
Q. What were those conditions?
A. For collective bargaining.
Q. And they had to take everybody else back also; is that it?
A. Yes, sir.
Q. Do you know whether or not anybody is working
1724 on your job at the present time, or not?
A. Yes, I do.
Q. Some other girl has your job at present, has she?
A. Yes, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Is it Miss Johnson?
A. Yes, sir.
Q. How long did you work at Fansteel?
A. Two years.

Q. Two years?
A. Yes, sir.
Q. I take it you began there shortly after you finished school, did you?
A. Three months after.
Q. You finished school three months before you went to work for Fansteel; is that correct?
A. Yes, sir.
Q. And you worked for how long a period of time, up to February the 17th?
A. Well, some months we were laid off, and I don't know exactly how long it was.
Q. But what time have you been connected with Fansteel, including the time you were off?
A. Two years.
1725 Q. Were there many girls, or women, in your department?
A. Well—
Q. Let me ask you, which do you prefer that I call you: girls, or women?
A. Women.
Q. I want to get it right.
A. Women.
Q. How?
A. Women.
Q. Women. All right. We call the ladies both women and girls, and you would rather have us call you women.
A. Well, it makes no difference.
Q. All right. How many women were there in your department on February the 17th, 1937?
A. There were about 22, I imagine; around there—about 22.
Q. Were there always 22 there?
A. No.
Q. Or did the number change from time to time?
A. It changed.
Q. During that two-year period?
A. Yes, it changed.
Q. Sometimes it was less?
A. Yes, sir.
Q. And sometimes it would be more.
A. Yes, sir.
1726 Depending upon the work?
A. That is right.

Q. And you were laid off from time to time?
A. Yes.
Q. And then recalled; is that right?
A. Yes, sir.
Q. And so were others?
A. Yes, sir.
Q. In that department. That is the fact, is it not?
A. Yes, sir.
Q. All right. Now, on February the 17th, you had no trouble with anybody there, did you?
A. No, sir.
Q. But somebody ordered you out of the building, did they not?
A. Yes.
Q. Your group: was that in with these other women who have testified?
A. How is that again?
Q. Or I mean, your building: were you in the same building that Miss Mesec was in?
A. Building 3.
Q. How?
A. 3.
Q. Building 3.
A. Yes, sir, the Contact Department.
1727 Q. And there were at least two men came in there—
A. Yes.
Q. —and told the women to get out?
A. Yes, sir.
Q. And those were the men whom we have referred to here as men who were working for the company, and who were members of the same union you belonged?
A. Yes.
Q. That is right, is it?
A. Yes, sir.
Q. And that is why you left?
A. Yes, sir.
Q. You had not had any trouble with the management?
A. No, sir.
Q. You were not fired, or discharged?
A. No.
Q. On that date, were you?
A. No.
Q. You just left because you were told to leave?
A. Yes.

Q. By those men who belonged to the union?
A. Yes, sir.
Q. That is the fact, is it not?
A. Yes, sir.
Q. So you left.
1728 A. Yes.
Q. And you did not come back.
A. No.
Q. You never made application for your job, did you?
A. No.
Q. You say you did not read the article in the newspaper.
A. No, I didn't.
Q. But you had heard about it; you had heard from others who had read the article, or the advertisement, that the company was perfectly willing to take you women back, and take the other employees back if they would report within a reasonable length of time, the date being fixed in the article?
A. Yes, sir.
Q. Before the date fixed by the article; that is right, is it not?
A. Yes, sir.
Q. But you did not pay any attention to that?
A. No, sir.
Q. In other words, you did not want to go back.
A. No.
Q. That is right, is it not?
A. That is right.
Q. (By Mr. Walsh.) You did not want to go back unless everybody else went back; is that it?
A. Yes, sir.
1729 Q. (By Mr. Block.) Now, you said something about —that you had found out that your job had been taken.
A. Yes.
Q. That somebody else had taken your job.
A. Yes, sir.
Q. You did not want to go back, to take that job, did you?
A. No, sir, not unless the rest went back.
Q. How?
A. Not unless the rest went back.
Q. Yes. I understand that you have attached some condition to it. You were not surprised of course, then, to find that your job had been filled by somebody else, were you?
A. No, of course not.
Mr. Block: That is all.

Mr. Walsh: Nothing more.

Q. (By Trial Examiner Dudley:) Just a moment, please. Is this position which you have now, a permanent position?

A. No, temporary.

Q. Do you know how long it will last?

A. Just this week.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: That concludes the testimony of all of the ladies I have present, if the Examiner please. Now I have one man from group 1, whom I would like to put on at this time.

1730 Trial Examiner Dudley: Group 1, you say?

Mr. Walsh: Yes. Mr. Luke.

ELMER LUKE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Elmer Luke?

The Witness: Yes sir.

Mr. Collins: Have you been served with a subpoena—you spell your last name L-u-k-e?

The Witness: Yes, sir.

Mr. Collins: And you have been served with a subpoena to appear before the Examiner here this afternoon?

The Witness: Yes.

Mr. Collins: If the Examiner please, on behalf of the witness I wish to claim his privilege under Section 11, paragraph 3 of the National Labor Relations Act.

Trial Examiner Dudley: Granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 711 Edward Street.

Q. How long were you employed by the Fansteel Company?

A. Since October 1st, 1936.

Q. What was your job?

A. I was a spinner in the Contact Department.

Q. When did you join the union?

A. In the first part of November.

1731 Q. 1936?
A. Yes.
Q. The plant did not operate between the 17th and the 26th of February, did it?
A. No, sir.
Q. When did you draw your last pay from the company?
A. Well, that was about the 7th or 8th of March.
Q. Did the company take up your pass at that time?
A. They asked me for it at that time, but I told them that I left it in the building, and he says that was all right, that he would get it. It was in my locker.
Q. Did you talk to anybody about going back to work?
A. Not that day; later on I did.
Q. And were you offered re-employment at a later date?
A. Yes, I was.
Q. By whom?
A. I don't know who it was. My dad told me. My dad works there, and he came home one day and told me that they could use me down there if I wanted to go back.
Q. Is your father an officer of the company?
A. No, he is not.
Mr. Keele: What was that?
A. No, he is not.
Q. (By Mr. Walsh.) What was your hourly rate of pay?
A. I started at 35 cents per hour.
1732 Q. What was your hourly rate of pay when the strike occurred down there?
A. 45 cents.
Q. How many hours per week did you work?
A. Oh, anywhere from 40 to 50.
Q. What was your average weekly pay?
A. About $18.
Q. How much have you earned since February the 26th, 1937?
A. About $125.
Q. What did you do to earn that?
A. I am working at the present time at the Johnson Motor Company.
Q. Normally, do you do any work on the outside for pay, when you are working for Fansteel?
A. No, sir—well, I sing in a quartette, and once in a while we go out and get a few dollars that way.
Q. You sing tenor, do you?
A. Baritone.

Mr. Block: What is it?

A. Baritone.

Q. (By Mr. Walsh.) Were you one of the men who occupied the buildings in the plant between February the 17th and February the 26th?

A. Yes, sir.

Q. You were one of the respondents in the contempt
1733 case, were you?

A. Yes, sir.

Q. And one of the defendants in the injunction proceeding?

A. Yes.

Q. Now, when the trouble occurred there on the 17th of February, the management did not tell you to stop work, did it?

A. No.

Q. The stoppage of work was caused by the men taking over the buildings; is that right?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Mr. Luke, how old are you?

A. 19.

Q. 19 years of age.

A. Yes, sir.

Q. When did you first go to work?

A. On October 1, 1936.

Q. That was the first job you had?

A. Yes, sir, that was the first job I had since I got out of school.

Q. That is what I mean.

A. Yes.

Q. That was your first job since you had gotten out of school.

A. Yes, sir.

1734 Q. The very first employment that you had, was that which was tendered to you, or given to you by the Fansteel Company?

A. Yes.

Q. And that was in October of 1936?

A. Yes, sir.

Q. When did you join the union?

A. The first part of November.

Q. That is, the following month.
A. Yes, sir.
Q. After you started to work.
A. Yes, sir.
Q. And you were getting what pay, when you started?
A. 35 cents per hour.
Q. That was in November, 1936?
A. Yes, sir.
Q. Is that right?
A. Right.
Q. What were you doing, by the way?
A. I was spinning.
Q. Spinning?
A. Spinning contact points on the springs.
Q. You never had done work of that kind before, had you?
A. No, sir.
Q. You had had no experience along that line?
A. No, sir.
1735 Q. Did you discuss the question of your membership in the union with anybody in the company?
A. No.
Q. That is, I mean, with any of the officers of the company, your foreman, or anybody else.
A. No, sir.
Q. Did you with your father?
A. I did with my father, yes, sir. He says, "It is up to you. If you want to joint, why, it is up to you." He didn't know whether he was going to join, at that time, or not.
Q. But you did discuss it with your father?
A. Yes, sir.
Q. That is right is it?
A. That is right.
Q. And from November until February the 17th, 1937, nobody connected with the company found fault with you in any way, did they?
A. Well, not that I know of; anyway, they didn't tell me about it.
Q. That is what I mean.
A. No, sir.
Q. And you remained in their employ?
A. Yes, sir.
Q. Your wages were not decreased?
A. No.

1736 Q. Did you receive some raises, while you were working for the company?

A. Well, yes, they gave us a general raise in November some time, but I wasn't there long enough to receive that.

Q. Did you participate in that?

A. No, sir. I wasn't there long enough. I was about a week short of the required number of days, to get that raise, so I didn't get it.

Q. But anyway, your pay had not been reduced.

A. No, sir.

Q. Up to February.

A. That is right.

Q. And you were getting along all right there, were you?

A. Yes, sir, as far as I know.

Q. Yes, as far as you know.

A. I was.

Q. And then on February the 17th, when the men took over the buildings, what did you do?

A. I stayed right there with them.

Q. You stayed right there with the other men.

A. Yes, sir.

Q. Which building were you in?

A. Building 3.

Q. And you stayed in there all of that time, did you?

A. Yes, sir.

1737 Q. You were there on the evening of February 17th, 1937, were you?

A. Yes, sir.

Q. You were there when the sheriff came out there?

A. Yes, sir.

Q. The first time.

A. Yes.

Q. And you were there when the sheriff came out the second time, were you?

A. Yes, sir.

Q. You never did leave that building?

A. Not until the last time.

Q. Until all of them left.

A. That is right.

Q. On February the 26th.

A. Right.

Q. And after February 26th, you never went back, did you?

A. Yes.

Q. And applied for your job?
A. Yes, I did.
Q. You did?
A. Yes, sir.
Q. When?
A. A couple of weeks later, I went back.
Q. You went back where?
1738 A. To Fansteel.
Q. I see. Well, did you go back to apply for your job, or did you go back, to work?
A. I went back and had a talk with Mr. Anselm, and he said he would call me when he needed me.
Q. He did not say that he would not take you back because of what you had done, did he?
A. No, sir, he didn't. He shook hands and he said, "All is forgiven."
Q. All right. That was a kindly act, was it not?
A. He said, "Let's be friends."
Q. How is that?
A. He said, "Let's be friends."
Q. I see. And I say, that was a kindly act, in view of the fact that you had occupied that building since February the 17th, was it not?
A. Yes, sir.
Q. How?
A. Yes, sir, it was.
Q. Well, now, that conversation that you had with Mr. Anselm, was when?
A. Oh, I don't know.
Q. Approximately.
A. Well, it was a week or so—in fact, about two weeks perhaps after Fansteel was operating again.
1739 Q. How did you happen to be there? Were you called there, or did you go back yourself?
A. I went back myself.
Q. Well, by that time a good many people had returned to work had they not?
A. Yes, sir.
Q. When you came there, it was two weeks after the plant had reopened?
A. Well, it was the day following—it was after the paper came out, with that notice that appeared in the paper.
Q. Yes?
A. I called up Luther Henry on the final day, which was

Friday, and he told me to come back the next morning and see Mr. Anselm, and I could have my job back; and that was the day I went down there.

Q. So that when you went down there, you did not have any conditions attached to your proposed employment, did you?

A. No, sir.

Q. You were ready to go back at any time they wanted you; is that right?

A. I was at that time, yes, sir.

Q. But up to that time you had only worked for the company approximately what; two or three months?

A. Five months.

Q. How?

1740 A. Five.

Q. Five months.

A. Yes, sir.

Mr. Block: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Luke, does your father belong to the union?

A. He did, yes.

Q. Does he now?

A. No, sir.

Q. What is his first name?

A. Gustave.

Q. Is he working now?

A. Yes, sir.

Q. At Fansteel?

A. Yes, sir.

Q. When did he go back?

A. As soon as they opened up again.

Q. What kind of a job does he have there?

A. He has charge of the gas house.

Q. Of the what?

A. Of the gas house.

Q. How long has he been with the company?

1741 A. He has been there 19 years.

Mr. Block: I did not get that.

Q. (By Mr. Block.) You say that your father is now back?

A. Yes, sir.

Q. Working at Fansteel?

A. Yes, sir.

Q. I do not know whether Mr. Walsh asked you this question or not, but were you one of the defendants in the injunction proceeding?

A. Yes.

Mr. Walsh: Yes, I asked him that.

Mr. Block: You did ask that?

Mr. Walsh: Yes.

Mr. Block: What was the answer?

Mr. Walsh: He said he was.

Mr. Block: He was?

Mr. Walsh: Yes.

Mr. Block: All right. That is all.

Trial Examiner Dudley: That is all.

(Witness excused.)

Mr. Walsh: At this time, if the Examiner please, we will progress into group 4, commonly known as the "Art Holm group", there being two persons in that group. Before we proceed with the next witness, may I suggest a short recess at this time?

1742 Trial Examiner Dudley: I will declare a brief recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will reconvene.

Mr. Walsh: Art Holm, Senior.

Mr. Keele: Just a moment. Might we recall Elmer Luke at this time for just a few further questions on cross?

Trial Examiner Dudley: Come back again, Mr. Luke.

ELMER LUKE, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Keele.) Mr. Luke, you were sworn and testified a few moments ago here in this case.

A. Yes.

Q. You testified as I recall it that you are now working for the Johnson Motor Company.

A. Yes, sir.
Q. Here in Waukegan.
A. Yes.
Q. What is the nature of that employment? Is that permanent employment so far as you know?
A. Well, I don't know. He said it would only be for a couple of months. It is mostly seasonal work down there.
Q. I see. So your best information is that your job
1743 is only for a couple of months?
A. As far as I know.
Mr. Keele: That is all.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: Art Holm, Senior. This witness has already testified, if the Examiner please.
Trial Examiner Dudley: You have already been sworn.
Mr. Holm: Yes, sir.

ART HOLM, SR., recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Holm, did I ask you the other day when you were on the stand here, what wages you drew; what was your pay.
A. No, I don't believe you did.
Q. You were a foreman, were you not?
A. Yes.
Q. Your pay was $215, was it not?
A. Well, for the last year or so.
Q. How is that?
A. The last year, it was.
Q. During the period of your duties there at Fansteel, were you ever criticised for the conduct of your work?
1744 A. Not to my knowledge.
Q. When did you draw your last pay from the company?
A. Around the first week in March, I believe it was.
Q. Was that mailed out to you, or did you go to the plant to get it?
A. I went to the plant and got it.

Q. Did you talk to anybody there about your discharge?
A. No, I didn't.
Q. I believe you testified that you were discharged on the 25th of February.
A. Yes—well, that is—
Q. That is when you got the letter.
A. The letter was mailed on the 25th.
Q. Yes.
A. And I received it on the 26th.
Q. You received it on the 26th.
A. Yes, sir.
Q. How much have you earned since you were let out down there?
A. Around $80.
Q. What did you do to earn that?
A. Well, I was a city official here in Waukegan.
Q. Is that normal—did you normally earn any money outside, during the time you worked for Fansteel?
A. The last two years, up to the 1st of May, I drew $8 a week as an alderman.
1745 Q. Are you an alderman at the present time?
A. No, sir, I am not. I got licked May 1st.
Q. I see.
Trial Examiner Dudley: You drew $8 per week for how long?
The Witness: For the last two years, your Honor, up to the 1st of May, I drew that.
Q. (By Mr. Walsh.) The $80 you drew was just for temporary work, working for the city?
A. We had a meeting—we held every Monday night of the year, a meeting in the council room.
Q. Well, since February the 26th, 1937, you have earned $80; am I right?
A. Yes, sir; that is for March and April.
Q. For March and April.
A. Yes, sir. I was paid up to the 1st of March.
Q. I see. But since the 1st of May, you have not had that job, have you?
A. No, sir.
Q. All right.
A. Not since May 1st.
Mr. Walsh: You may inquire.
Mr. Keele: Have you finished on direct?
Mr. Walsh: Yes.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Holm, you were foreman
1746 of the Maintenance Department, were you not?

A. I was.

Q. Do you recall one job that was given to you with reference to the repairing of a skylight, and that in connection therewith Mr. Anselm spoke to you a number of times about getting it done,—in building 6.

A. Why, yes, I remember that job.

Q. As a matter of fact, that job never was done, was it, while you were there?

A. No, and I think I ordered about four batches of material for that job, but it never got done.

Q. Now, then, do you remember a job in connection with a guard rail on a stairway, that you were ordered to have your outfit fix up, and that Mr. Anselm spoke to you several times about getting that done?

A. Well—

Trial Examiner Dudley: Pardon me a moment. May I have that question again please, Mr. Reporter.

(The question was read.)

Q. (By Mr. Keele.) What is your answer?

A. Can I explain, and answer that question the way I want to answer it?

Q. Well, will you just tell us first whether you remember that incident, or not.

A. I remember one railing.

1747 Q. All right. Well, he had to speak—he did speak to you about that several times, did he not?

A. Why, I think that—I don't think he ever spoke to me about it, no, sir.

Q. Then he never spoke to you; that is your best judgment is it?

A. Not him, no. The reason I didn't do that job was because—

Mr. Keele: Just a moment.

Trial Examiner Dudley: Just answer the question.

Mr. Keele: We will give you a chance after a while.

The Witness: It wasn't in my line.

Q. (By Mr. Keele.) Now, do you remember a job in the die-polishing department, that Mr. Anselm spoke to you about doing?

A. Die-polishing?
Q. Yes.
A. What do you mean?
Q. Well, I mean a job that had to do with insulation; the insulation and making water proof of a certain portion there in the die department.
A. Why, yes, we were working on that, and it was nine-tenths complete.
Q. Mr. Anselm spoke to you about that, and asked you to get that done three different times, did he not?
A. Why, he might have asked me five or six different times, but when a rush job came along, we didn't bother
1748 with those jobs at all. When the machinery broke down, we would let them stand. There are jobs down there now that we were supposed to do—
Q. That you did not get done?
A. Of course not. They were just repair jobs.
Mr. Keele: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Holm, what about this skylight job?
A. Well, it is an old building; it is part of—it is a building that they have been talking about tearing down for the last five years; and the only reason that we could not take the skylight off was on account of its being old and rotten aronnd there.
I suggested myself that we take the skylight off and patch the roof up, because we didn't need the light any more. It was no rush job.
Q. No what?
A. It was no rush job, and we would do it when we had the time, and that was all.
Q. There was nothing imperative about the skylight being repaired at once, was there?
A. Why no.
Q. Was the building being used?
A. The building, most of the time—years ago it was used for production, but in the last year it really was a dead
1749 building. There is a stock room in part of it, and that roof was patched up. But the west end of the building was just a piece of junk. They even had the price on a brand-new building down there; so that there was no hurry; it was no rush work.

Q. Was the part of the building over which this skylight extended, occupied?

A. Well, in the last few months before the strike, which was in February, we patched it up, and I made a carpenter shop out of one part of it; and this part here had an experimental machine, and we moved a few machines down there; but there was nothing underneath that roof that could be hurt if it rained all day long. It was just plain cement.

Q. Now, tell us about the guard rail.

A. Well, that building is made out of—

Q. Will you first tell us what building the guard rail in question was in.

A. I think the guard rail that he has reference to was in building No. 3. That is a concrete reinforced building, and it has steel hand-rails; and at the time of construction, instead of putting a band around the post, like it ought to be done, they just stuck the pipe in the side of the post, and bedded it in with about a half an inch of concrete.

Q. Yes.

A. Now, that has been loose on that post I think for 14 years; off and on, it has been hanging there. It was no
1750 emergency at all, and when he asked me to fix it, we were busy.

Q. Busy with other emergency matters around the factory?

A. Yes, sir. I asked him if I couldn't get the welder to weld a piece of metal around the post, or around the pipe, to make it stay. The rail is in; the welder put it in. It isn't broke now. I seen that it was fixed.

Q. It was fixed?

A. Yes, sir; it is all fixed.

Q. Was it fixed before February 17th?

A. I have no welder in my gang at all; that is a separate gang.

Q. Are there welders in the factory?

A. Oh, yes, there are two or three of them.

Q Now, how about the job in the die-polishing department, which as I understand it was an insulating job.

A. Well, that is a little shanty that has been in that same building—in building 6. Years ago, when they had a machine shop there, they used it for a stock room. Well, we enlarged it, and put a little dog-house, you might call it, on top; and it has stood that way for quite a few years.

Q. How many years?

A. Well, I should judge it must be five years old.
Q. Yes.
A. (Continuing) But we couldn't get it heated up properly, and they have women working in there, and they
1751 would kick, because it was cold. When they would have a cold northeast wind, of course, it would blow through there, because it was poor construction all the way through, just a shack. So we decided to put some plasterboard on there, and fix it up; and that job was nine-tenths complete, practically, when we quit. It had nothing to do with holding up production at all. We did that while production was going on.
Q. And at the time the trouble broke out, you say that was almost finished; is that correct?
A. At the time of the trouble, that was nine-tenths finished, yes, sir.
Mr. Walsh: That is all.
Trial Examiner Dudley: Just a moment, Mr. Holm; there are a few questions I would like to ask you.
The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) You were foreman of what department?
A. Maintenance Department.
Q. How many men did you have under you?
A. Well, that varied from—it all depended on whether—well, 15 years ago I had maybe as high as 30.
Q. How many men did you have under you during January and February of this year?
A. Around 11 men, I believe.
1752 Q. What kind of men were they, as far as their trades were concerned?
A. Their trades?
Q. Yes.
A. Every man I had was an expert in his line.
Q. What were their lines?
A. Carpenters, millwrights, steam-fitters, electricians, machine oilers; and the rest of them were helpers, of course.
Q. You had one carpenter?
A. Well, we used four men at that—it would all depend on how big a job was. We really had, I should say, two carpenters and two millwrights.

Q. How many steamfitters?
A. Well, sometimes I had two steamfitters, and two helpers.
Q. Do you mean that the number of men under you varied from time to time?
A. Oh, yes. If we had new work, why, sometimes—sometimes we put in a lot of new equipment. You see, they have changed that—
Q. No, I am speaking now of January and February of this year.
A. We were busy at that time.
Q. Well, did the number of men under you vary at that time?
A. No, sir, they haven't varied.
Q. At that time, then, you had two carpenters and two millwrights?
1753 A. Well, sometimes—let me see. All of my carpenters and millwrights were really in one. That is if a big job came along, you could call them all millwrights, working on machinery, and if they were working on a building, they were carpenters. Each trade carries the same card. That is, an outside man carries the same—
Q. Well, you have four carpenters and millwrights together?
A. Yes, I had four of them together.
Q. How many steamfitters?
A. Two steamfitters.
Q. How many electricians?
A. Two electricians.
Q. How many machine oilers?
A. One.
Q. That makes nine men.
A. Yes.
Q. And two helpers.
A. Two helpers.
Q. Those were the eleven men under you.
A. Yes, sir.
Q. When were you made foreman?
A. I think it was in 1920.
Q. Did they tell you what your job was at that time?
A. Yes.
Q. Or what your responsibilities were?
1754 A. Yes, sir, he told me; he told me what he wanted. He wanted a foreman to run it. I was working there at the time.

Q. In the Maintenance Department?
A. Yes, sir.
Q. Did he merely say at that time that you were to run the Maintenance Department from then on?
A. He asked me if I wanted the job, and he offered it to me. I didn't ask for it.
Q. And you took it?
A. I took it.
1755 Q. During the last six months, or year, who has been your immediate superior there?
A. Well, the last two weeks, Mr. Anselm was; but before that time it was Luther Henry.
Q. Have you had frequest disputes with Mr. Anselm?
A. I never had an argument with him in my life.
Q. You testified before, I believe, that Mr. Anselm came back to work when you were on your vacation?
A. Yes.
Q. That is correct, is it?
A. That is right.
Q. And you had a conversation with him the first day you got back from your vacation?
A. Oh, yes.
Q. That was last fall?
A. That was two weeks after Labor Day, but we didn't have any argument.
Q. You never had any argument with Mr. Anselm?
A. No.
Q. Have you had arguments with Mr. Henry since last fall?
A. No, sir, I don't believe I ever had an argument with him, either; that is not insofar as any work was concerned. We might have had an argument about something else, some outside matter, but not in the line of work. I done as they told me. They didn't have to argue with me.
1756 On these jobs that they have reference to, when the gang isn't busy, we go ahead and do these jobs. They are jobs down there now that are five years old, that aren't done yet.
Q. Now, when did they first speak to you about the skylight that has been referred to?
A. Well now, I think that goes back—let me see. That is at least a year and a half ago.
Q. Who spoke to you then?
A. Luther Henry.

Q. Did he ask you at that time, or instruct you at that time to have it fixed?

A. Well, the way it came up, we were going to get the roof fixed, and I asked him if I couldn't tear the old glass off—you see, it was an old glass skylight—and patch it up; and he thought that was a good idea, because it wasn't necessary to do anything to the roof. The roof was perfect. But there wasn't much pitch to the roof, and the snow would melt and get in there, and kind of make it moist on the floor. But it was no rush job, as we call them. We have other rush jobs.

Q. Did he speak to you about it after that?

A. Well, yes, sir, he used to ask me every once in a while, when was I going to get at it.

Q. Did he ever tell you that he wanted it done by a certain time?

A. He never did.

1757 Q. Did Mr. Anselm speak to you frequently about it?

A. The only time he ever talked to me about it was when a machine stood underneath that part of the roof. You see, we put—in the last few months we put in some old equipment, around there, and of course we ought to have got it fixed before fall. At the time, the building was practically empty; there was nothing in it.

Q. By "fall" do you mean the fall of 1936, or the fall of 1937?

A. I mean the fall of 1936. We wanted to get into the thing before winter, because after it got cold weather, why we couldn't open the building up on account of the heat. We would have had to open up the roof, about 10 by 80 feet, I think it was.

Q. Now, when was it you talked with him about that?

A. Well, I do not know what date it was. I do not think I talked to Mr. Anselm about it at all. If I did, it was just a comment, as to when we were going to get it fixed. There was no set time about it.

Q. As far as you remember, you never talked to Mr. Anselm about the skylight at all?

A. Not specially, no, sir. We would just maybe happen to be standing underneath there, and if it was raining, why, there would be a few little drops of water coming down, and

1758 he might have made the remark to me, "We had better get that on before fall."

Q. Was it Mr. Henry with whom you were talking, who said that it ought to be fixed by the fall of 1936?

A. Why, nobody said it should be fixed by the fall of 1936, no, sir, only that we wanted to get it in before winter. That happened in the summer, a year ago.

Q. I thought you said just a moment ago that you were going to move a machine in there, in the fall of 1936—

A. No; we just moved a machine in there—

Q. —and had to fix it before that.

A. We had just moved a machine in there this last summer.

Q. In the summer of 1936?

A. Yes, sir. We had it there in the early summer.

Q. Was that the machine that needed protection?

A. Well, it didn't need protection right there, but it was in that building—in case they wanted to store anything there. The skylight wasn't over the machine. The skylight was over another part of the room.

Q. Did either Mr. Henry or Mr. Anselm ever give you a date by which they wanted the skylight fixed?

A. No, they never did.

Q. Did either of them ever tell you they wanted it fixed right away?

A. Why, no. It would have been fixed, if they had.

Q. Did either of them ever tell you that they
1759 thought you were delaying too long on the skylight job?

A. No, sir.

Q. And that they would like to have you get after it right away?

A. No, sir, they never said anything like that about it.

Q. Has the job been fixed yet, as far as you know?

A. Why, I don't know. It wouldn't take only one day to do the job; four men could do it in one day.

Q. Now, in regard to the railing of the stairway; you say that was finally fixed by a welder?

A. Yes, sir.

Q. Who spoke to you about that?

A. Well, they have a factory inspector who comes through there and makes notes of different little things that they see, that ought to be fixed, like safety appliances, and one thing and another, and it was on the regular monthly inspection report, and it was supposed to be fixed before he came around again, or every time he makes the same report about it.

Q. For what month was the report on which this was noted?

A. I think it was—well, it might have been pretty near—well, it might have been a year ago this time. I couldn't say unless I look at the report. I have it down there on the desk.

Q. If it was about one year ago from now, it would
1760 be about June 1936, would it?

A. Yes, sir, I think so. That is just an approximation, though. I don't know the date.

Q. And you say that is fixed now?

A. Yes, sir; that is the railing that we referred to. That is fixed now.

Q. But you did not fix it?

A. No, sir. We just patched it up so that it wouldn't fall down, because there was no emergency to it at all. It was just a little pipe that fell out of the post.

Q. Is it the patching-up to which you refer as being fixed by the welder?

A. Well, you see, there was no way to repair it, because it was buried in the cement, to start with. They just put it in—they just buried it in there about half an inch, and then when it worked out—it wouldn't stay in. You see, there was nothing to hold it in there. So I suggested taking a metal band, and putting it all the way around the concrete post, and welding the pipe at the top. The railing lays against the floor going down, so there was no way for you to fall down, unless you went and crawled into a space about three or four feet high. It wasn't a dangerous open railing. You see, the floor runs along on the same angle.

Q. Well, did they do the job as you suggested it be done—

A. Oh, yes.

1761 Q. —by a welder?

A. It was done by a welder.

Q. From another department?

A. Yes, sir.

Q. To whom did you make that suggestion?

A. Well, I believe I suggested that to—I believe I suggested that to Mr. Anselm, when he first came back.

Q. In September, 1936?

A. Yes.

Q. Did he have a welder fix it, or did he speak to the man who was in charge of the welding department?

A. I didn't have charge of the welders. He called up the machine boss, and showed him what he wanted.

Q. Mr. Anselm called the machine boss, did he?

A. Well, I am not sure whether it was him—either him or Luther Henry. You see, they were both around there.

Q. Do you know when it was fixed?

A. No, I don't know what date it was.

Q. About when was it?

A. Well, it would be pretty hard to tell any date, because—

Q. Before the strike?

A. Oh, yes, it was done before the strike.

Q. Was it as early as September, 1936, would you say?

A. I should judge—well now, by George, it must have been the first part of September, although I am not pos-
1762 itive about that; but I know it was done, because I showed it to him.

Q. And after it was fixed by the welder, did the item appear again on the monthly report of the inspector?

A. No, sir, I never seen it on there any more. When we finish a job like that, we check it off, and that was off the list. We used to have 20 or 30 of them sometimes, years ago.

Q. Now, I want to ask you about the job in the die polishing department. With whom, and when, did you have your first conversation about fixing the shanty, do you remember?

A. Well, they have been talking about fixing that die room I think for four years.

Q. Did anybody give you instructions to fix it?

A. Well, yes; oh, yes.

Q. When?

A. I had orders to fix it.

Q. When?

A. That might have been—well now, I think that was a year ago last fall, as I recall it.

Q. That is the fall of 1935?

A. I believe it was.

Q. Who gave you the instructions?

A. I believe it was first taken up—

Q. Who was your superior at that time?

A. I am just wondering now if Mr. Dow wasn't the
1763 man, at that time. Mr. Al Dow was superintendent before, I think.

Q. Did he tell you when he wanted the work done?

A. Oh, no, he didn't; not any particular time. There never was any particular time fixed. On those kind of jobs, there is never any time limit set on them. They were there, and

when we got the time we would go around and fix them up, because they didn't hold up production at all. They were just simply ordinary affairs.

Q. Did either Mr. Dow or Mr. Henry, or Mr. Anselm, ever tell you that they wanted that job finished up by a certain date?

A. No, sir, they never did.

Q. Did they ever tell you, any of the three of them, that they were dissatisfied with the speed at which you were finishing that job?

A. No.

Q. And that they wanted you to hurry it up?

A. No, sir, they didn't. They couldn't say that, because they knew I was busy on something else.

Trial Examiner Dudley: That is all I have. Are there any further questions of the witness?

Mr. Keele: Nothing more.

Mr. Walsh: That is all. Let us have Jack Taylor. This witness has not been sworn, if the Examiner please.

Trial Examiner Dudley: Oh, I beg your pardon. 1764 There are a few more questions that I would like to ask you, Mr. Holm.

Q. (By Trial Examiner Dudley.) You testified that you were made foreman in 1920; is that correct?

A. Yes, sir—well, I wouldn't exactly say definitely that it was in 1920. I know I was foreman in 1920.

Q. And before that time you worked in the Maintenance Department?

A. Yes, sir.

Q. What did you do then?

A. Well, I was a millwright; I was hired on at that time as a millwright.

Q. How long had you worked as a millwright?

A. I have worked as a millwright for 35 years.

Q. That includes service with other companies?

A. Oh, yes.

Q. But how long had you worked as a millwright for Fansteel?

A. Oh, that is pretty hard to say, but I thinks perhaps pretty nearly one year, when I got the job. I don't know exactly. It was the year—or maybe six months. I don't recall.

Q. How much did you get paid as a millwright by Fansteel?

A. When I was working by the hour down there, I made as high as $3900 per year.

Q. How much per hour?

A. Well, it was 70 cents per hour, but of course we
1765 put in a lot of overtime, and that was all the union scale. At that time we had the regular union scale.

Q. But you were getting 70 cents per hour—

A. Yes, sir.

Q. —as your regular pay, during regular hours?

A. Yes, sir.

Q. As a millwright, that is.

A. Yes, sir.

Q. That was a 40 hour week. was it?

A. Oh, no. Sometimes it was a 100 hour week. We worked night and day at that time.

Q. But the 40 hour week was the regular week, was it?

A. Oh, the 40 hour week we have only had down there in the last couple of years.

Q. Did you have any regular time for a full week's work at that time?

A. Well, at that time we worked ten hours per day, if I am not mistaken, for a while—that is regular time; but of course we worked Saturdays, and Sundays, and every other day. We worked when other people went home.

Q. How much does a millwright get now at the Fansteel Company?

A. Well, right now there are not any of them getting very much, I think, that are in the gang there. They were cut down during the depression.

1766 Q. How much did the two millwrights who worked in the Maintenance Department, make per hour during the month of February 1937, before the strike?

A. Some got 90 cents, and some got 80 cents.

Q. Well, you said there were only two.

The Witness: Can I ask my man here what he was getting, what his rate was at that time,—sitting right here?

Trial Examiner Dudley: Surely.

The Witness: Carl, what were you getting per hour at that time?

Mr. Swanson: 95 cents.

The Witness: 95 cents. They were raised. Frankly, I am not sure what they did get. I was trying to get back up some of the wages, where they would be getting more money. They had been cut down pretty bad.

Trial Examiner Dudley: All right. I think that gives me what I want.

The Witness: You see what I mean, Mr. Examiner. I was trying to get raises for them. So when they told you they didn't know what they were getting, they were telling the absolute truth.

Trial Examiner Dudley: I think I have the entire picture now. Are there any further questions of the witness?

Mr. Keele: Yes, just a few further questions, if you please.

1767 *Recross Examination.*

Q. (By Mr. Keele.) Now, Mr. Holm, let us see. There were three jobs that I asked you about, I think; the skylight, the guard rail, and the die-polishing department.

A. Yes.

Q. Now, you were told to fix that skylight after you brought it to Mr. Anselm's attention, were you not? He told you to go ahead and do it.

A. I was told to fix that skylight, I think, before Mr. Anselm came back.

Q. I see. Well, when were you told to fix it?

A. Why, I don't know as anybody told me to fix it, to start with. I asked if I could fix it that way.

Q. Well, then, they said yes or no, did they not?

A. They said I could fix it if I got time. It wasn't nothing emergency.

Q. You are sure that they told you you could fix it whenever you got time?

A. Sure. It was no emergency job.

Q. Was there not a written order out on that?

A. If there was, it come in the last—why, I used to get a written order about twice a month, but there was a whole lot of jobs we had to do—

Q. Did the written order say you were to fix it whenever you had the time to do those things?

1768 A. It generally said which were emergency, and which were not.

Q. And it did not say "whenever you have the time", did it?

A. "When you get around to it."

Q. That was the way it was worded, "Whenever you get around to it"?

A. The building was complete; there was nothing wrong with it—

Q. Now, just a moment, Mr. Holm. Let us avoid the speeches if we can, and just answer the question. When was it you were told to fix that skylight?

A. Well, go down and look on the hook, and it will be marked on there. My memory don't go back that far.

Q. I see. You just brought out, though, that there was some discussion about it.

A. Yes.

Q. And that was before Mr. Anselm came back; is that right?

A. Yes.

Q. And when you left, it had not been done, had it?

A. Of course not.

Q. All right. Now then, what happened to the guard rail? That was in June, that the inspector made his report, was it not?

A. I don't know what date it was.

Q. Did you not testify to that just a little while ago?

1769 A. I told him I thought it was about that time.

Q. Yes. And when was that fixed?

A. Well—

Q. Not while you were there?

A. Oh, yes, it was.

Q. All right. When was it?

A. Well, now, if you go down and look at that hook—

Q. Never mind about my going down and looking at the hook. Answer the question.

A. Well, my memory don't go that far back, on such and such a date, because it didn't amount to a tinker's dam. It was a ten cent job.

Q. In your opinion?

A. What?

Q. In your opinion.

A. In anybody's opinion. Go down and look at it.

Q. The inspector wrote a letter about it, did he not?

A. How?

Q. The inspector made a report about it.

A. Why, sure.

Q. Yes.

A. Do you know what an inspector is?

Q. Let us not have any more speeches. Just answer the questions.

A. Well, I can answer questions in my own way, can't I?

1770 Q. When was that fixed, do you recall?

A. Why—

Q. Yes or no.

A. It was fixed in 1936, in the year 1936.

Q. Now, we are getting somewhere.

A. O. K.

Q. That was fixed in the latter part of the year, was it not?

A. Well, it was after the—yes, I think it was in the latter part of the year, I will say.

Q. Now, was it fixed in the last quarter of the year, or the first quarter of the year?

A. Well now, if you will just give me the time, I will go down there and tell you exactly when it was fixed, because it is marked right on the record, when it was fixed. They have got that right in the office.

Mr. Walsh: We object to further questions along this line, if the Examiner please.

Mr. Keele: Well, I do not want to overtax this man's mind—

Mr. Walsh: Let the respondent produce the record, if there is any record on that point.

Mr. Keele: We will.

Mr. Walsh: All right, then; let the record be produced.

Mr. Keele: We are entitled—

1771 Mr. Walsh: The witness has stated that he does not remember.

Trial Examiner Dudley: He told me—

Mr. Keele: I thought he did.

Trial Examiner Dudley: Just a moment. He testified before that it was fixed in September 1936,—did you not?

The Witness: I think it was around that time.

Mr. Keele: I see.

Q. (By Mr. Keele.) Does the matter of who is asking you the questions make a difference, as to whether you can remember or not?

A. No. I am just telling you the same thing I told him.

Trial Examiner Dudley: He said, "about."

Mr. Keele: All right.

Q. (By Mr. Keele.) Now, what about the job in the die-polishing department? When did you get that order?

A. How is that?

Q. When did you get the order to fix the insulation, or do the insulating work in the die-polishing department?

A. Well, I think that was on that same list, with the repair to the roof.

Q. Well, when—

A. I don't recall what date it was, or what month it was, now.

Q. Can you tell us about what month it was?

1772 A. Why, no. It is on a piece of paper down there—

Mr. Keele: I suggest, in order to avoid further contumacy here on the part of the witness, that the Examiner direct him to answer the question, either that he does not know, or else to give us a direct answer.

Trial Examiner Dudley: Well, he gave me a guess, in answer to my question.

Mr. Keele: That is what I am trying to bring out.

Trial Examiner Dudley: He said, about the fall of 1935.

Mr. Keele: About the fall of 1935?

Trial Examiner Dudley: Yes.

The Witness: Yes.

Q. (By Mr. Keele.) And when you left there in February, it was nine-tenths done, you say—in February, 1937?

A. Oh, it was easy nine-tenths done.

Q. Easily nine-tenths done.

A. Yes, sir.

Q. In February of 1937.

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all, Mr. Holm.

(Witness excused.)

Mr. Walsh: Jack Taylor.

Trial Examiner Dudley: You have not been sworn, have you?

1773 Mr. Taylor: No, sir.

JACK TAYLOR, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: You name is Jack Taylor?

The Witness: John Taylor.

Mr. Collins: John Taylor?

The Witness: They call me Jack, but John is my name.

Mr. Collins: Have you been served with a subpoena, to appear before the Examiner here?

The Witness: Yes, sir.

Mr. Collins: On behalf of the witness, if the Examiner please, I would like to claim his privilege under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?

A. 427 Ravine Avenue.

Q. Waukegan?

A. Waukegan.

Q. How long were you employed by Fansteel?

A. Oh, I should think about six or eight weeks.

Q. Prior to February 17th, 1937?

A. Yes, sir.

Q. You were in the Maintenance Department?

A. Yes, sir, I was; I worked in the Maintenance
1774 Department at that time.

Q. What was your job?

A. Carpenter.

Q. You joined the union, I believe, on March 11th, 1937; is that right?

A. When?

Q. When did you join the union?

A. I didn't join the union until after the strike was over with.

Q. Do you know what date that was?

A. Well, that must have been, I think, in February or March—yes, I think it was in March. I don't know; I don't recall the date when it was, but I think it was in March sometime.

Q. Now, during the progress of the strike down there, did you take an active part in the strike?

A. No, I didn't.

Q. Did you have anything to do with the strikers?

A. No.

Q. What was your hourly rate of pay while you were there?

A. At first I was getting 65 cents.

Q. And what were you getting then, up to February the 17th?

A. Well now, they gave us a raise of 5 cents, so then I was getting 70 cents. I got 70 cents.

Q. How many hours a week did you work?

A. I only worked part time.

1775 Q. Part time?

A. Yes, sir. I didn't work steady, you know.

Q. Oh, you did not.

A. No.

Q. How much did you draw per week?

A. Well, it would all depend on how many hours I worked. Sometimes we worked overtime, and of course it would all depend on just how much time we put in.

Q. Well now, how much did you draw for the first half of February, let us say?

A. Well, I couldn't answer that question, and get it right down correct, as to how much I drew.

Q. Well, could you tell us pretty closely?

A. Well, I think it was somewhere around in the neighborhood of $35.

Q. $35?

A. Yes, sir.

Q. For the first half of February?

A. Or $36, something like that. I couldn't tell you exactly.

Q. For the first half of February?

A. Yes, sir.

Q. How much have you earned since February 26th?

A. You mean, after I got out of there?

Q. Yes.

A. $45 altogether, that I have earned.

1776 Q. You worked for the WPA, did you not?

A. Well, of course, that isn't in that. This is outside of the WPA.

Q. Outside of the WPA?

A. The $45, yes, sir. That was in picking up little jobs here and there.

Q. Now, you were not in the strike at all, were you?

A. No, sir.

Q. Did you have anything to do with the strikers, while they were in the plant?

A. No, sir.

Q. Did you put any food, or bedding, or clothing in there?

A. No.

Q. After the plant reopened, did they call you back to work?

A. No, they haven't.
Q. Did you talk to anybody about going back to work?
A. No, I haven't,—yes, I did talk to one man, but that was the time I came for my pay. That was after the strike was over.
Q. When was that?
A. Well now, I think that was the 28th or 29th of February.
Q. Did they take up your pass at that time?
A. Yes.
Q. Did they issue you a new pass?
A. No, sir. I wanted to get my tools, and of course
1777 they wouldn't allow me to go in to get my tools; and then a week later—they said I could come back a week later, and I could probably get my tools then; so I did go back a week later.
Q. And took your tools?
A. Well, they called a man by the name of Nelson who works there, to go in with me, into the carpenter shop, to get my tools.
Q. Yes?
A. So I got my tools, and on our way going down there, why, Mr. Nelson says to me he—he says, "I thought" he says, "they were going to probably keep you here to take Art Holm's place." And I says, "I don't know nothing about it." And I says, "Furthermore, I wouldn't take nobody's place, with times the way they are right now."
Q. You were not on the picket line, were you?
A. No, sir.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) As I understand it, Mr. Taylor, you did not join the union until in March sometime?
A. Yes.
Q. And it was on the 29th that you went down there—on the 29th of February, you went down there to get your pay? That was after the men were evicted?
A. Well now, I couldn't say whether it was the 28th,
1778 or the 29th; but it was after the strike was over.
Q. And some time before March; is that right?
A. Yes, sir.

Q. All right. Some time between the 26th of February, and the 1st of March—

A. Yes.

Q. —you went down to get your pay?

A. Yes, sir.

Q. And at that time they did not tell you to continue on with your work, did they?

A. No.

Q. They told you that they would not need you, did they?

A. No, they didn't say anything like that at all. I just came down there to get my pay, and I wanted to go in and get my tools.

Q. You came down there with the intention of quitting; is that right?

A. No, no, I didn't quit.

Q. Why did you want your tools, then?

A. Why?

Q. Yes; why did you want to take your tools out?

A. Because there wouldn't be any work there for the next few days or so, and I was going to take on the WPA. That is why I wanted my tools.

Q. I see. As a matter of fact you only worked part 1779 time there, did you not?

A. That is all.

Q. And you had other jobs outside?

A. No.

Q. (Continuing.) Whenever you could get them.

A. No, sir. That was the only job I had outside, the WPA work.

Q. You worked on the WPA.

A. Yes.

Q. And you worked for Fansteel.

A. Yes, part time.

Q. At the same time?

A. Yes, sir. I happened to run into Holm just at that time, and he said that he had a lot of work, that there was a lot of work to be done, so I asked him how chances would be to work for a while for him; and he said, all right.

Q. You are still working for the WPA, are you not?

A. Yes, sir.

Q. You are doing some work over at Great Lakes, are you not?

A. That is where I am working, yes, sir.

Q. How?

A. That is where I am working.
Q. That is where you are working, yes.
A. Yes, sir.
Q. How much are you making now?
1780 A. On this WPA work?
Q. Yes.
A. $85 a month.
Q. $85 a month?
A. Yes, sir.
Q. And how much were you getting from Fansteel, when you were working for Fansteel? About $35 every two weeks, would you say?
A. No, sir, I wouldn't say $35 every two weeks, no. I said at first I was getting 65 cents per hour.
Q. Yes.
A. And that meant that we would work more hours, and then naturally we got more, but I couldn't say how much it would be.
Q. How much were you making with the WPA, at the time you were working for Fansteel?
A. That is all I was getting from the WPA, $85 a month.
Q. Right straight along, you have been doing that?
A. Yes, sir.
Q. And then in addition, you got whatever you did get from Fansteel?
A. Yes, sir.
Mr. Keele: That is all.
Trial Examiner Dudley: Just a moment, Mr. Taylor. There are one or two questions I want to ask you.
1781 The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) When did you start working for the WPA?
A. Oh, that was a year ago last August, I think it was.
Q. August of 1935?
A. I couldn't say for sure.
Q. Approximately?
A. Yes, sir.
Q. When did you say you started working for Fansteel?
A. Well, that was last fall, but I couldn't recollect just what date it was I started in there. I started in last fall, and

I think I got in altogether about six or eight weeks, that I worked there.

Q. About how many days a week did you work for Fansteel?

A. Well, that was four or five days a week.

Q. Four or five days a week?

A. Yes, sir, and then sometimes there would be overtime, also; that is, figuring that in.

Q. And the days of the week when you were not working for Fansteel, did you work for the WPA?

A. Yes, sir.

Q. So that you had a full week of work, did you?

A. Yes, sir, at that time.

Q. Did the WPA people know that you were also
1782 working for Fansteel?

A. Yes.

Q. They did know that?

A. Yes, sir.

Q. Did you have a skilled job with the WPA?

A. A cabinet maker.

Q. Cabinet maker?

A. Yes, sir.

Q. Are you working as a cabinet maker on WPA jobs?

A. Yes, sir.

Q. Who is your immediate superior in the WPA?

A. Well now, do you mean the one down at Great Lakes, where I am working?

Q. Well, I mean, wherever you are working. You said you were working at Great Lakes, for the WPA.

A. Do you mean the main boss down there?

Q. I mean the man from whom you take orders.

A. Well, the man that I take orders from is the shopman inside, where I am working.

Q. What is his name?
1783

A. Matt Reckinwall.

Q. What is the last name?

A. Reckinwall. Matt is the first name, and Reckinwall is the last name.

Q. Does he spell it R-e-c-k-i-n-w-a-l-l, or something like that?

A. Well, I really don't know how he does spell it, but that is the way he calls it.

Q. Something like that?

A. Yes.

Q. Does he know that you were working for Fansteel?
A. Yes, sir.
Q. You never had anything to do with the union until March 11th, when you joined, did you?
A. No.
Q. You had never taken part in any union activities?
A. No.
Q. And you took no part in the strike?
A. No.
Q. In any way?
A. No, sir.
Q. Are you related to anybody who took part in the strike?
A. No.
Q. Did anybody at Fansteel ever say anything about
1784 your services not being satisfactory?
A. No, sir. There was nobody ever said anything like that to me, about it. I wouldn't probably have joined the union at that time, if it hadn't been that some of the fellows in the office there didn't exactly like to take my word, telling them I didn't belong to the union. They thought I did, at that time.
Mr. Keele: Just a moment. What was that last answer?
(The answer was read.)
Q. (By Trial Examiner Dudley.) What fellows do you mean?
A. I don't know. I think it was one of these men here; I think this man here was there, and I think there was—
Q. Meaning the man wearing the brown suit there?
A. Yes, sir.
Mr. Keele: Mr. Anselm?
The Witness: Yes, sir, and I think the president of the company was there; kind of a dark complected fellow.
Q. (By Trial Examiner Dudley.) Mr. Aitchison, the man sitting on the bench alone over there?
A. It looks a good deal like that man sitting right there. (Indicating.)
Mr. Swiren: Do you mean me?
The Witness: No, no, not you; right next to you there. He looks a good deal like the man I am speaking about.
1785 Mr. Swiren: He was a nice looking fellow, then.
Mr. Keele: There is no question about that.
The Witness: Well, at any rate, they doubted my word.
Q. (By Trial Examiner Dudley.) Did they talk with you?

A. Yes.
Q. What did they say?
A. They asked me if I belonged to the union.
Mr. Swiren: Talk a little louder, please.
Trial Examiner Dudley: He says they asked him if he belonged to the union.
The Witness: Yes, they asked me if I belonged to the union, and I says, "No," and of course, they didn't like to take my word for it, and then after a while they says, "Well, we will take a chance, and give you your money."
I suppose they didn't want to give me my money if I belonged to the union. I suppose that it is the way it was, although I just don't know; I couldn't say exactly.
Q. (By Trial Examiner Dudley.) Just a moment. About when was that conversation?
A. Well, now, I think that was between the 26th and the 28th of February, when I came back after my money.
Q. Between—
A. But I couldn't say exactly.
Q. Just a moment, Mr. Taylor. Between February the 26th and February the 28th—
1786 A. Yes.
Q. —you were talking with Mr. Anselm?
A. Yes, sir.
Q. The man wearing the brown suit there?
A. Yes, sir.
Q. And also this gentleman sitting alone over here on the bench, you say?
A. Yes.
Q. In front of the rail?
A. Oh, no.
Q. He was not the other gentleman?
A. No.
Q. I thought you said—
A. No, it don't look to me as if it was him.
Q. You do not know who the other person was?
A. No, I couldn't say now.
Mr. Swiren: He has already identified Mr. Block.
The Witness: It looks something like him, but I don't know if it was him or not.
Q. (By Trial Examiner Dudley.) Where was the conversation?
A. That was in the office, at the Fansteel office.
Q. Whose office was it?

A. Well, just as you go in the lobby, I guess.
Q. By the information desk?
A. Yes, sir.
1787 Q. Who did the talking, as between those two gentlemen?
A. Why the man—the dark complected fellow is the one that done the talking.
Q. You mean the one who was with Mr. Anselm?
A. Yes, sir.
Q. Now, as near as you can remember, give me his exact words?
A. That was all he said.
Q. Well, what did he say? Give it to me again, and very slowly.
A. All right. He asked me if I belonged to the union.
Q. Yes.
A. And if I was in the strike.
Q. Yes.
A. And I says, no, that I wasn't in the strike, and I didn't belong to the union.
Q. Yes.
A. Well, then he kind of doubted it for a while; he didn't know whether to give me my money or not.
Q. What money were you talking about?
A. That was the pay that I had at that time, when I went down there, before the strike was pulled off.
Q. Did he say that he would not give you your money, if you belonged to the union, or were involved in the strike?
A. No, sir, he didn't say that, but I guess it was—
1788 the ones that was in the strike, why, they wasn't supposed to get their money for sometime, I guess.
Q. You say, you guess that?
A. Yes.
Q. What do you mean by that?
A. Just what I say. I say, I don't think they got their money, the ones that was in the strike, at that time, or on that day.
Q. Do you know of anybody who was in the strike, who did not get their money?
A. No, I don't.
Q. How long did these gentlemen discuss giving you your money at that time?
A. Oh, only a few minutes, probably. After we got through talking, why, they, Mr. Anselm gave me my money.

Q. Were they laughing, or joking, or smiling, when they said that?

A. They weren't laughing.

Q. When they asked you if you had been engaged in the strike?

A. No, sir, they weren't laughing or smiling.

Q. They were not?

A. No, sir, I guess they meant it all right.

Q. You thought they meant what they said?

A. Yes, sir.

Trial Examiner Dudley: All right.

1789 Mr. Keele: Just another question or two.

Q. (By Mr. Keele.) Mr. Taylor, you stated, I believe, that it was in February that you got your pay?

A. Yes.

Q. Sometime in February.

A. Yes, sir.

Q. Before the 1st of March?

A. Yes.

Q. The strikers were evicted on Friday the morning of the 26th; do you remember that?

A. Yes, sir.

Q. All right. The last day of February, which was a working day, was Saturday the 27th, so you must have gotten your pay on the 27th; is that not correct?

A. Yes, sir, I believe it was.

Q. All right.

A. I think it was the 27th.

Q. All right.

A. I was mistaken.

Q. And the rule was that the strikers did not get their money until they came out of the buildings; you heard that did you not, Mr. Taylor?

A. I don't know when they got their money.

Q. Well, did you know that was the rule?

A. No, I didn't.

1790 Q. Did you know that the strikers, none of the strikers got their money before the 3rd of March?

A. No, sir.

Q. Did you understand when they said—or when they doubted whether or not you belonged to the union, whether or not you had taken part in the strike—you understood that if you were a striker, or a member of the union, you would not get your money at that time?

A. Yes.
Q. All right.
A. That is the way I took it.
Q. And they said, "We will take a chance on you"?
A. Yes.
Q. And they gave you your money?
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: I have one or two more in group 1, whom I would like to put on at this time.
Trial Examiner Dudley: This man was in group 4?
Mr. Walsh: Yes. That concludes group 4. Nate Mogel. May this witness be sworn, if the Examiner please.

NATE MOGEL, called as a witness on behalf of the National Labor Relations Board, being first duly sworn,
1791 testified as follows:

Mr. Collins: Your name is Nate Mogel?
The Witness: Yes, sir.
Mr. Collins: Spell your last name for the reporter.
The Witness: M-o-g-e-l.
Mr. Collins: Have you been served with a subpoena to appear before the Examiner here?
The Witness: I was.
Mr. Collins: On behalf of the witness, Mr. Examiner, I would like to claim his privilege under section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: Privilege granted.

Direct Examination.

Q. (By Mr. Walsh.) What is your address?
Trial Examiner Dudley: Just a moment. Is Nate your entire first name?
The Witness: Nathan.
Trial Examiner Dudley: Nathan.
The Witness: Yes, sir.
Q. (By Mr. Walsh.) Now, Mr. Mogel, talk up loud, so that they can all hear you back there. What is your address?

A. At the present moment, in Chicago, it is 4017 North Clarendon Avenue.

Q. How long were you employed by Fansteel?

A. Three months.

1792 Q. What was your job?

A. In the sintering department.

Q. When did you join the union?

A. About a week before the strike.

Q. And did the plant operate between the 17th of February and the 26th of February?

A. Not that I know of.

Q. When did you draw your last pay from the company?

A. In the early part of March.

Q. Did they take up your pass at that time?

A. No.

Q. Did you talk to anybody about going back to work?

A. No, I didn't.

Q. Were you ever offered reemployment by the company?

A. No.

Q. What was your hourly rate of pay?

A. 44 cents per hour.

Q. How many hours a week?

A. About 45 hours a week.

Q. What was your average weekly pay check?

A. Anywhere from $20 to $25.

Mr. Swiren: We cannot hear. Speak up a little louder.

The Witness: I will, on the next question.

Mr. Swiren: What was the last answer?

(The answer was read.)

1793 Q. (By Mr. Walsh.) How much money have you earned since February 26th, 1937?

A. $120.

Q. What were you doing to earn that money?

A. On the job that I have now, managing a store, a delicatessen store and liquor shop.

Q. Normally, when you were employed by Fansteel,—or when you were employed by Fansteel, did you do any work on the outside for pay?

A. No.

Q. Now, you were one of the men who occupied the plant—

A. Yes.

Q. (Continuing)—between February the 17th and February the 26th, were you not?

A. Yes, sir.

Q. You were one of the defendants in the injunction suit, were you?
A. My name was not mentioned there, no, sir.
Q. Your name was not mentioned?
A. In the injunction suit, no, sir.
Q. And you were not one of the men involved in the contempt case, were you?
A. I gave myself up—yes, sir.
Q. I see. Now, when the work stopped there on the 17th of February, the management did not order the work
1794 stopped, did they?
A. No, sir, they didn't.
Q. The stoppage was caused by the men taking over buildings 3 and 5, was it not?
A. Yes, sir.
Q. And you have never been offered reemployment by the company?
A. No, sir.
Mr. Walsh: You may examine.

Cross-Examination.

Q. (By Mr. Keele.) Did you ever make an application?
A. Yes, I filled one in.
Q. You filled one in?
A. Yes, sir.
Q. How long did you say you had worked there?
A. Three or four months.
Mr. Keele: That is all.
Q. (By Trial Examiner Dudley.) Mr. Mogel, is this job which you now have, manager of a delicatessen and liquor store, a permanent job?
A. Yes, sir.
Q. That is your present job?
A. Yes, sir.
Q. And you expect it to last indefinitely, do you?
A. Yes, sir.
1795 Trial Examiner Dudley: Is that all with the witness?
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: Thank you.
(Witness excused.)
Mr. Walsh: If the Examiner please, this witness is now

living and working in Chicago, and I would like to ask that he be excused from further attendance at the hearing.

Mr. Keele: Give us his address.

Mr. Walsh: Yes; leave your address with counsel here.

Mr. Mogel: Surely.

Mr. Walsh: And if they want you, they will recall you.

Mr. Swiren: Does the record show the address of the witness?

Mr. Mogel: 4017 North Clarendon Avenue, Chicago.

Trial Examiner Dudley: The witness is excused, unless notified to the contrary.

Mr. Walsh: At this time, if the Examiner please, I want to offer part of Board's exhibit No. 1. At this time I will offer Board's exhibit 1-O, which is the order denying the application for subpoenas, and subponaes duces tecum. I understand there is no objection on the part of respondent.

Trial Examiner Dudley: Is there any objection to receiving in evidence Board's exhibit No. 1-O?

Mr. Swiren: Of course, we object to the entry of the
1796 order, if the Examiner please. We think it is highly improper.

Mr. Keele: Let us see just what it is.

Mr. Swiren: (Continuing.) To permit counsel for the Board to carry around a pocketful of subpoenas, and to issue them—

Trial Examiner Dudley: Let Mr. Keele look at it.

Mr. Swiren: —with no notice, and deny us any right to subpoenas—

Trial Examiner Dudley: This is not the time for a speech, Mr. Swiren.

Mr. Swiren: Well, I wanted to state—

Trial Examiner Dudley: I want to know whether you object to the reception into evidence of this exhibit, yes or no.

Mr. Swiren: I would like to state my grounds, as the rules require.

Trial Examiner Dudley: Yes, I know.

Mr. Swiren: I am sorry, but the rules require a statement of my grounds.

Trial Examiner Dudley: I want a yes or no answer, or nothing else.

Mr. Swiren: I cannot do anything except to comply with the rules. The rules and regulations require a statement.

Trial Examiner Dudley: I want nothing else. I want
1797 to know, yes or no, and if you have no answer, I will admit it.

Mr. Swiren: I have made my statement for the record.

Trial Examiner Dudley: And I might say that if counsel cannot conduct himself in the way in which a respectable member of the profession should, then I think that the respondent can get along with the other three counsel that it has.

Mr. Swiren: I take an exception to the remark of the Examiner.

I have a right to invoke the rules and regulations of the National Labor Relations Board, and I think the Trial Examiner ought to hear me when I do. It is the perfectly proper thing to do.

Trial Examiner Dudley: Mr. Reporter, let the record show that Board's exhibit No. 1-O is received in evidence.

(The document referred was received in evidence as BOARD'S EXHIBIT NO. 1-O.)

Mr. Walsh: That, I think concludes all of the testimony with reference to the various men, that I can offer at this time, if the Examiner please. I will proceed now—

Trial Examiner Dudley: There are still a few girls, are there?

Mr. Walsh: There are two girls who have not testified.

Mr. Keele: Just a moment, if the Examiner please. We do wish the record to show our objection to the entry of the order.

Trial Examiner Dudley: You do have an objection to
1798 the reception of this in evidence?

Mr. Keele: Yes. I do not see that it tends to prove any of the issues in the case, and it is, therefore, objected to: and then, of course, we do object to the fact that the order was entered as is. But that is not the point. The point here is the objection to the entry of this document in to evidence as an exhibit.

Trial Examiner Dudley: The record shows your objection to the entry of the document as an exhibit.

Mr. Walsh: Yes.

Trial Examiner Dudley: And I will overrule the objection. Your objection is noted on the record.

I will declare a short recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: The hearing will reconvene.

Mr. Walsh: I will recall Mr. Swanson.

CARL ANDREW SWANSON, recalled as a witness for the National Labor Relations Board, previously duly sworn, and testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Swanson, you have testified here before?

A. Yes, sir.

Q. On September 10th at the meeting between the Bargaining Committee and Mr. Anselm, was something said
1799 at that time about the formation of a representation plan?

A. Yes, sir.

Q. Will you tell us briefly what was said at that time?

A. Well, there was some pamphlets, or books, I believe they call it E. R. P., or something like that—

Q. Employees Representation Plan?

A. Yes, sir, that was in effect, I believe, at that time, in the American Steel & Wire Company at Waukegan.

Q. And some booklets were distributed to the members of the committee at that time, were there?

A. Well, there were some distributed, but I don't know who all received them, and I don't know how many; but there was some booklets there, yes, sir.

Q. One of those booklets has been introduced in evidence here. You have seen this booklet, have you not?

A. Yes, sir.

Q. Now, later, that afternoon, did any of the officials of the company attempt to solicit members for a company union in the plant?

A. I was told that they had.

Q. And who were those officials, if you remember?

A. Bill Schultz, the secretary to the superintendent; Mr. Hall, a foreman; and Luther Henry.

Q. Anyone else?

A. That is the only ones they told me about; that
1800 is, the parties that had been talked to about it, told me that they had talked to them.

Q. You were told that this solicitation took place in the afternoon, after the meeting with the management; is that right?

A. Yes, sir.

Q. Were you solicited yourself?
A. No, sir.
Mr. Walsh: That is all.
Mr. Keele: I think we ought at this time, if the Examiner please to move to strike the testimony of this witness from the record, on the ground that he has merely been told that there was solicitation. While we may have the right of cross-examination, as to the meaning of that, it is all hearsay. If they want to tell us who the men were who told him that, and if then those men were to be called I think that would be a totally different proposition; but it seems to be, while the rules of evidence are relaxed, as has been stated, in these hearings, that is going quite a good way, on hearsay of that kind.

Even if the Examiner feels that it is necessary to get that information, I think that the more proper way would be to first see if we cannot get the men who were solicited.

Trial Examiner Dudley: Are you going to bring them in, Mr. Walsh?

1801 Mr. Walsh: Yes.

Mr. Keele: Well, if they are brought in, it may not be very damaging,—that sort of evidence,—except I think if he brings these people in, and shows who they are, and shows it directly by the men to whom the solicitations, if they were solicitations, were addressed, we ought to have the right to have this testimony stricken from the record.

Trial Examiner Dudley: I will permit the testimony to stand, with the note on the record, however, that it is rather extreme hearsay.

Mr. Keele: Yes; I think myself it is going rather a long way.

Trial Examiner Dudley (Continuing.) And should not be given very much weight.

Mr. Keele: I think, if he cannot prove who the parties were, what the solicitations were, if he cannot get at it in any other way, that is one thing; but if he can, even though this may be introductory, it nevertheless does have a certain amount of probative force if it is permitted to remain in the record. I mean, it is impossible for a man to read the record and not give him some effect to a statement of that kind.

Trial Examiner Dudley: I believe counsel has finshed his direct.

Mr. Walsh: Yes.

Trial Examiner Dudley: Do you desire to cross-examine?

1802 Mr. Keele: I might ask him just two or three questions.

Cross-Examination.

Q. (By Mr. Keele.) Who were the men who told you this, Mr. Swanson, if you recall?

A. Elsworth Peters was solicited by Mr. Hall, and it was either Harold Stricklen, or Frank Ludlow, that was solicited by Mr. Henry; and there was some girl—I don't recall her name—that told me she was solicited by Mr. Schultz.

Q. Well, now, did all of them use the word "solicited"; or just what did they say to you?

A. Well, it was the same meaning. That is Elsworth Peters said that Red Hall told him that he had better sign this if he thought anything of his job.

Q. Now, Red Hall is not a foreman, is he?

A. I understand he is a foreman.

Q. Well, as a matter of fact, do you not know that he is on an hourly basis, and always has been?

A. I don't know what basis he is on.

Q. Then you made the statement that he is a foreman, without knowing it, did you?

A. Well, I understand that he orders material and so forth, for his department, and has charge of a certain number of employes under him.

Q. And that is not the test of being a foreman, is it?

A. Well—

1803 Q. Now, are there not other men who order material without being foremen?

A. Well, he was the only one up there, to my knowledge, who did that?

Q. Well, it comes down to this, does it not, that you do not know whether he is a foreman or not? Is that not the fact?

A. I don't know how he is listed, for getting his paycheck; whether he is listed as a foreman or not, I don't know that.

Q. You do not know whether he is on an hourly pay basis—

A. No.

Q. —or on a salary basis?

A. No.

Q. But if he is on an hourly pay basis, then he was eligible for membership in the union, was he not?

A. Not necessarily, no.

Q. I thought the definition that you gave here the other day was to the effect—

A. Well, he might have had the right to hire and fire. Whether he had that right or not, I don't know.

Q. That would be the final test, wouldn't it?

A. Well, that is one of the tests.

Q. Well—

A. There is no final test; We haven't set up any final test as to that.

Q. Well, I do not want to get back again into what
1804 your rules for eligibility are, but if a man does productive work, and is on an hourly pay basis, and has no right to hire or fire, he is eligible for membership in the union, is he not?

A. Well, I cannot give you the exact status of that. I am not an expert on that.

Q. Well, then, if you do not know what your eligibility rules are, how are you able to say how many people there were eligible?

A. Considered eligible, I say. I would not say definitely that they were or were not eligible. It was those that were considered eligible by us.

Q. Well, now, I do not mean to go back into cross-examination upon a matter that was covered two or three days ago, but as I remember it, you stated at one time there were so many members on September the 10th—86 I believe—in the union; and 86 on September the 21st; and at that time not over 160 were eligible?

A. Yes.

Q. Well, now, as I understand it, you are saying now that the statement that you made that 160 were eligible, meant those that you considered to be eligible?

A. Yes.

Q. Or your understanding of that?

A. Yes.

Q. Now, is that correct?

1805 A. Yes, sir.

Q. Well, now, you have quoted people as saying that they were solicited.

A. Yes.

Q. In one case you told me that Hall told one man—I have forgotten now who you said it was—Elsworth Peters—that if he considered his job, he had better sign.

A. Well, he had an argument over it, but it was something to that effect.

Q. He did not have—

A. (Continuing) I can't give you the exact statement that he made as to that, but he said they had an argument.

Q. Well, he did not have any superior rank to Elsworth Peters, did he, in the organization—not of the union, that is, but of the company.

A. I would say so, yes, sir.

Q. That is your belief?

A. Yes.

Q. But again, you do not know on that point, because it would depend on whether he was a foreman or not; that is right, is it not?

A. Yes, sir.

Q. They were in different departments by the way, were they not?

A. Yes, sir.

1806 Q. Now, you mentioned next a man named Stricklen.

A. Either Stricklen or Ludlow, I believe it was.

Q. Ludlow?

A. Yes.

Q. You said they told you about solicitations.

A. Yes.

Q. What was said to you?

A. He just said that they were asked to sign up.

Q. That they were asked to sign?

A. Yes, sir.

Q. Stricklen is not a foreman, is he?

A. No, sir.

Q. And was not at that time?

A. No, sir.

Q. In other words, he was on an hourly rate basis, was he not?

A. I think he was.

Q. And had the same rank as Ludlow?

A. Yes, sir.

Q. Now, do you recall who it was that spoke to the girl?

A. I believe it was William Schultz, the girl told me, spoke to her.

Q. Schultz is a member of the clerical force, is he not?

A. Yes, sir.

Q. In the administrative offices of the company?

1807 A. Yes, sir.

Q. He has no title, other than that of secretary to Mr. Anselm, or assistant—has he?

A. I don't know what his title is, but we assumed that he was secretary to the superintendent, although just what his official capacity is, we don't know.

Mr. Keele: I think that is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down.

(Witness excused.)

Mr. Walsh: Earl Fagan. This witness has already been sworn, Mr. Examiner.

THOMAS E. FAGAN, recalled as a witness for the National Labor Relations Board, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Fagan, you were sworn and testified here the other day about a talk that you had with Mr. Anselm, around the afternoon of September 10th.

A. Yes.

Q. About joining a company union. Is that right?

A. No, sir, not about—I didn't testify about joining a company union.

Q. Well, I will ask you whether or not you talked to Mr. Anselm about a company union?

1808 A. I talked to him about the proposition that he wanted to break up the organization that we have now; he said he wanted to break it up.

Q. I believe you said something about him having a petition to sign?

A. Yes, sir. He had a paper there, but he never asked me to sign it.

Q. He did not ask you to sign it?

A. No, sir.

Q. Did he say anything to you about joining a company union?

A. Well, he said that if I would drop the CIO, it would be forgotten in a year or two, whether it was put over at that length of time long enough to go through.

Q. Did he say anything about organizing a Representation Plan?

A. No.

Q. Did he indicate what the petition that he had there, was for?

A. No.

Mr. Walsh: That is all.

Mr. Keele: May we have just one moment here, if the Examiner please.

Trial Examiner Dudley: Yes.

(A brief intermission followed.)

Cross-Examination.

1809 Q. (By Mr. Keele.) Now, will you just tell us again, the conversation that you had wtih Mr. Anselm, at the time that you have testified you talked with him?

A. Well, it was shortly after dinner, when he came into the room and called me.

Q. What date?

A. February 10th, in the afternoon. He called me over to the desk, and—

Q. Let us have that date again.

A. February 10th.

Q. Are you sure that was the date?

A. That is what I have in mind.

Trial Examiner Dudley: What year?

The Witness: 1936.

Q. (By Mr. Keele.) Now, let us have it again.

A. Oh, no. Wait a minute. I am wrong about that.

Q. How?

A. I got that wrong.

Q. You remember that you had that date pretty clearly in mind the other day, do you not?

Mr. Walsh: You scared it all out of him.

Q. (By Mr. Keele.) What was the date, Mr. Fagan, to give you an opportunity here? We are not trying to trap you.

A. September 10th.

Q. September 10th.

1810 A. Yes.

Q. All right. Go ahead.

A. And he said, "Earl, I want to break this thing up."

And then he says, "Did you read this contract?" I says, "Yes, I read it once." Then he told me that there was no court in the land that would not hold them if they signed it.

Q. And what else did he say?

A. Well, then he started talking about the CIO, and I showed him my card, and I told him that if he got the whole bunch of us up there and talked to us, that was all right, but that I didn't have no—I was no boss of it, or had nothing to say; and he said he had busy all that morning, and didn't think he would have time to take us over to the office and talk to us.

He says, "I will tell you what I will do; I will give each man five minutes." So then he called up, either Ted Daluga, or Clarence Dreyer—I don't know which was next; and I went back down in my seat then, at my machine.

Q. Where were you when this conversation took place?

A. Sitting up on the boss' desk.

Q. What do you mean by the "boss"?

A. Mr. Chiswell, the foreman.

Q. Well, then, as I understand it, the substance of the conversation was that Mr. Anselm said something about as follows: "Have you read this contract?"

1811 A. Yes.

Q. "There isn't a court in the land that would hold us to it, if we do put our signatures to it"—is that right?

A. Yes, sir, as I remember it.

Q. And then that he would like to break up the CIO business.

A. He didn't say "CIO".

Q. He just said he would like to break something up?

A. He said—

Q. What was it he said he would like to break up?

A. He said, "I would like to break this thing up"; and then he says, "I will give you something better than this contract; something even better."

Q. Well, when he talked about breaking something up, he was talking about that contract, was he not?

A. Well—

Q. He came in and said that there was not a court in the land would hold them to it, if they put their signatures to that contract; is that not right?

A. Yes, sir.

Q. And then he said, "I would like to break this thing up"?

A. Yes, sir, and I took it for granted that he meant Lodge 66.

Q. Well, he did not have anything to say about Lodge 66, did he?

A. No, sir, he just said that he wanted to break the thing up.

Q. You had just been talking about the contract, 1812 had you not,—or he had?

A. Yes, sir.

Q. And his whole attitude was that the contract was all wrong, was it not?

A. Well, he said he could offer something better even than that.

Q. And then it was after that that he spoke about the union, was it not?

A. After—

Q. After he said "I want to break this thing up?"

1813 A. Well, I haven't got the regular routine in my mind, just from start to finish, as to which came first.

Q. Well, is that not the way it happened, the way I have recited in here?

A. Say that over, will you?

Q. As I understand the situation, he came in to see you, and he said first, "Have you read this contract?"

A. Yes.

Q. And you got up on Bill Chiswell's desk, and read it over.

A. Yes, sir.

Q. And then he said, "There is no court in the land would hold us to this if we put our signatures on it", did he not?

A. Yes, sir.

Q. How?

A. Yes.

Q. And then he said that he wanted to break "this thing up", is that correct?

A. Yes, sir, he said, "I would like to break this thing up."

Q. And then he said he could do even better than this contract?

A. Yes, sir, he said that he could give us a better contract.

Q. Give you more than that?

A. With a company union, as I remember it.

Q. Then he asked you if you had read the Employee Representation Plan, is that correct?

1814 A. Well, I don't recall that.
Q. Well, that pamphlet, or booklet?
A. (No answer.)
Q. Did he ask you anything about that?
A. I don't remember.
Q. You do not remember that?
A. No, sir.
Q. Then you say he began talking to you about the union.
A. About the C. I. O.
Q. About the C. I. O.
A. Yes.
Q. And he said that in a couple of years there would not be anything to it; it would be forgotten?
A. He said that even if in a couple of years the thing did go over, in a couple of years, and it would go good, it would all have been forgotten, my quitting at that time. That is the way I understood it.
Q. What did you think he meant by that? I do not just understand those words myself. What did you think he meant by that?
A. Well, what I thought he meant by it was this, that I would just naturally quit, tear up my card and quit; and then if the C. I. O. drug along, and in a couple of years after that got good and strong, and they got into it there would be new men in it, new men working there, and it
1815 would just never come up again.
Q. In other words, that they would have forgotten whether you were a member of not.
A. Yes, sir.
Q. Is that it?
A. That is the way I understood it.
Q. In other words, he indicated to you that if you would quit right then and there, by the time they got it organized, they would have forgotten all about whether you were ever a member or not?
A. That is the way I took it.
Mr. Keele: I think that is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down.
(Witness excused.)
Mr. Walsh: I will recall Frank Zelenick. This witness has already testified, if the Examiner please.

FRANK ZELENICK, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Zelenick, were you at one time solicited by some of the officers of the company to become a member of an employees representation plan, or company union?

1816 A. Yes, sir, I was.

Q. When was that?

A. Around September 10th; I believe it was on the 10th.

Q. Who talked to you about it?

A. James Hall.

Q. What position does James Hall occupy with the company?

A. He is a foreman of a department on the fourth floor.

Q. What department is he in?

A. I guess it is known as the Railroad Signal.

Q. Railroad Signal?

A. Yes, sir.

Q. What did Mr. Hall say to you?

A. Well, he came by me, and he says, "Do you want to sign this?" I said, "What is it?" "Well" he says, "we are trying to form a company union like they have down in the wire mill." And I said I wasn't interested. "Well" he says, "you might as well sign up." He said, "The rest of the fellows are signing." He said, "The company will never recognize the outside union, anyway."

Q. Did you have any further talk with him about it?

A. Well, there was a discussion there, where he tried to prove to me that the company union was genuine, and active; and I went around and proved that it was not.

Q. I see. And did you ever have any further talk with him about it afterwards?

1817 A. No, I didn't.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Why do you say Hall was a foreman?

A. Because.

Q. Because what?
A. The people who work up on the fourth floor with him refer to him as their foreman.
Q. Well, does the fact that someone calls a man something—they sometimes call Frenchy DuBois a lawyer, do they not?
A. No, sir.
Q. No?
A. No, sir.
Q. But if they do, would that make him a lawyer?
A. Well, I don't know.
Q. What? Have you not been called names, called things that you were not?
A. Oh, sure.
Q. All right. Is that all you know, then, as to whether or not he was a foreman?
A. Well, I believe that those fellows that worked with him, knew who their foreman was.
Q. You are basing it on that, are you?
A. Yes, sure.
Q. Do you know whether he was on an hourly rate of
1818 pay, or on a salary basis?
A. No, sir, I don't; I wasn't interested in that.
Q. In other words, you want him to be a foreman in this case, do you not?
A. Well, he always was a foreman.
Q. Well, I say, you want him to be a foreman; you would like to have him be a foreman in this case, would you not?
A. Not what I want; what he is.
Q. Do you want to take oath on the fact that he was a foreman?
A. Sure.
Q. And you base that on the statement that two other men called him that?
A. Yes.
Q. And that is all you know about it?
A. The people that worked with him, referred to him as their foreman.
Q. There were four men in that department; you know that, do you not?
A. Three, at the time.
Q. And he was foreman over three men, was he?
A. Yes, sir.
Q. On a salary basis?

A. That I don't know.

Q. Did he work in production, just like any other man?

1819 A. I don't know—no, I don't think he did, sir.

Q. You do not know, do you?

A. No, I don't.

Q. The foremen downstairs do not do that, do they? Where they have 10 or 12 people under them, they do not work in production, the foremen whom you know to be foremen, do they?

A. Yes, they work.

Q. They do not work on production work, though, do they?

A. Yes.

Q. They do not go over to a machine and work—

A. Yes.

Q. —along with other men, do they?

A. My foreman worked on machine work at times.

Q. At times?

A. Yes, sir.

Q. But not regularly?

A. No, not regularly.

Q. All right. And Hall does regular work, does he not,—and did, when you knew about it?

A. Well, I don't know whether he worked regularly or not. I seen him walk up and down from the fourth floor to the first floor all day long. I don't call that work.

Q. You do not call that work?

A. No, sir.

Q. A hod-carrier who walks up and down with his 1820 hod; you do not call that work?

A. He wasn't carrying a hod.

Q. If they are just peripatetic, they do not work; is that it?

A. (No answer.)

Mr. Keele: All right.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Zelenick, do you know what a self-serving declaration is?

A. What?

Mr. Walsh: I will withdraw that. That will be all.

Trial Examined Dudley: Just a moment, Mr. Zelenick. There are a few questions I want to ask you.

The Witness: Yes, sir.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) When Mr. Hall was talking to you, did he have anything in his hand, by way of a document, petition, or anything of that sort?

A. Yes, sir, he had a petition in his hand.

Q. He had a petition?

A. Yes, sir.

Q. Did you see it?

A. Yes, sir.

Q. Was it typed?

A. It was typed.

1821 Q. Did you read it?

A. No, sir. I didn't see the type, but he told me what it was.

Q. And that is what you testified to a while ago?

A. Yes, sir.

Q. Did he say where it was typed?

A. Well, he told me that he was ordered to do that, to go around and get signatures, by the superintendent.

Trial Examiner Dudley: Is there any further cross examination?

Mr. Keele: Yes.

Recross Examination.

Q. (By Mr. Keele.) Hall told you that, did he?

A. Yes, sir.

Q. Did he tell you that Mr. Aitchison ordered him to go around?

A. The superintendent, the plant superintendent.

Q. Mr. Anselm?

A. Yes, sir.

Q. Where did this conversation take place?

A. Over by my machine.

Q. And there were five or six other people present there, were there?

A. Oh, I believe Joe Richveis was there part of the time.

Q. Was Bankowisch there, or Galbavy, or any of the

1822 boys who do not understand English?

A. Galbavy?

Q. Yes.

A. No. They didn't work in my room at all.

Q. Tell us who was there, who heard the conversation?

A. I think Richveis would be the only one who was there. He would get right behind my machine.

Q. And he heard the conversation?

A. He walked over to see what it was all about.

Q. He heard the conversation?

A. I think he heard it.

Q. What was the date; can you fix that for us?

A. I believe it was the 10th of September.

Q. How do you fix that date?

A. Well, it was a few days after Mr. Anselm came back, the superintendent, and he came back on the 8th of September. Whether it was two or three days later, when he came around with this petition, I don't know.

Q. But how do you remember the date when Mr. Anselm came back?

A. Well, it was the day after Labor Day.

Q. The day after Labor Day?

A. Yes, sir.

Q. How do you remember that? Did you see him there that day?

1823 A. Yes, sir—there was a notice put up on the bulletin board in the morning, early in the morning, to that effect.

A. What hour of the day was this?

A. Oh, it was about—I would say about eight o'clock; and Mr. Anselm came up into the department about nine or ten, on the 8th.

Q. No, I am talking about this conversation; you say Joe Richveis was there.

A. Oh, that took place about—I would say about two o'clock in the afternoon, or two-thirty.

Q. What was on that petition?

A. Well, as I said before I didn't read it; he just told me what it was.

Q. He did not show you the petition?

A. He showed me the signatures.

Q. Well, now, the signatures were all on one page, were they not?

A. Yes, sir.

Q. Well then, what was at the head of the petition?

A. I didn't read it.

Q. You do not know, then, what was in that petition, do you?

A. He told me what it was.

Q. Were you not enough interested to read the petition?

A. Well, naturally he knew what he was going
1824 around with. I took his word for it.

Q. He was your foreman?

A. Yes.

Q. And you want it understood that way; it that it?

A. Yes, sir.

Q. That fits your theory of this case better; is that right?

A. Sure.

Q. And you are not concerned with whether it is true or not?

A. It is true.

Q. You are not very much concerned as to whether you are telling the truth in this thing, or not, so long as it fits your case, are you?

A. Sure I am concerned. That is exactly what happened.

Q. You are very anxious to follow the obligations of your oath here; is that right, or not?

A. I am following them.

Q. Do you want to follow them, or is it a question of whether it fits the case?

A. I say, I am following them.

Q. And I say, are you inclined to follow them, or is it just a question of whether it fits the case?

A. I am inclined to follow them.

Q. All right. But you did not take time to read that petition, to see what it was, did you?

A. I took his word for granted.

1825 Q. Now, listen. Just answer the question. Did you or not?

A. No.

Q. All right. Did you read the names on it?

A. I did, yes, sir.

Q. But you did not read what else was on there?

A. No.

Q. Do you know whether there was anything else on there or not?

A. Sure, there was.

Q. Well, what was it, and how do you know?

A. There was two or three lines at the top, over the top of the signatures, but I just looked at the signatures.

Q. All right. Now, what signatures were on there?

A. Well, there was Gus Canclakes.

Q. All right. Who else?

A. Pete Skarbalus.
Q. Yes. Who else?
A. There was Mary Reffer.
Q. Who else?
A. Alan White.
Q. Ellen or Alan?
A. Alan.
Q. Who else?
A. George Smith.
Q. George Smith?
1826 A. Yes, sir.
Q. Who else?
A. That is all that I can remember right now.
Q. How many names were on there, about?
A. Oh, I would say, at that time, there were about ten names on there.
Q. About ten?
A. Yes, sir.
Q. And you took occasion to look at each one of those names, but you did not see what was written in the typewritten lines?
A. Well, I just glanced over them.
Q. Well, what did they say?
A. Well, he told me.
Q. Never mind about that, now. What did the lines say? You say you glanced over them.
A. I didn't read the lines.
Q. You say you glanced over them.
A. I glanced over the names, the signatures.
Q. And you remember all of those names at this time, just from glancing over them?
A. I don't remember them all; I just gave you a few of them.
Q. You gave me six, did you not?
A. Five, I believe.
Q. All right. Five.
A. Yes.
1827 Q. And that was the only time that anybody ever talked to you about the question of organizing a union, was it?
A. Yes—
Q. Other than the C. I. O.
A. That is the only time.
Q. And that is everything that was said to you?

A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may step down.
(Witness excused.)
Mr. Walsh: Recall Joe Richveis.

JOE RICHVEIS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) Did you have a talk at one time with James Hall about belonging to a company union?
A. Yes, sir.
Q. Do you recall the date?
A. No, I don't remember that.
Q. You have just heard Mr. Zelenick testify here, have you not?
A. Yes, sir.
Q. Was it at the same time that he talked about—
1828 A. Yes.
Q. —the same time that he talked to Zelenick, about a company union?
A. Yes, sir.
Q. Where did this talk take place?
A. Right in the factory.
Q. In your department?
A. Yes, sir.
Q. What department is that?
A. That is the Wire Department.
Q. What did Red Hall say to you, and what did you say to Red Hall?
A. Well, he came over to me and asked me if I wanted to join a company union, and I told him no. He says, "Why not?" I says, "Because I belong to one union, and I don't want to belong to another."
Q. Did he say anything else, or did you say anything else at that time?
A. No.
Q. Did he have a paper in his hand?
A. He did.
Q. Did you read that paper?

A. No, I didn't.
Q. Did you look at it at all?
A. No.
1829 Q. Do you know whether Red Hall was an officer or or a foreman of the company at that time?
A. Well, I heard them say around there that he was a foreman, but I couldn't swear to it. I don't really know if he was a foreman or not, actually.
Q. He was not in your department, was he?
A. Sir?
Q. He was not in your department?
A. No, he wasn't.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) That is all you know about that instance, is it?
A. Sir?
Q. That is all you know about that incident?
A. Yes, sir.
Q. That is everything you know about it, that you saw or heard at that time and place?
A. What do you mean, what I heard?
Q. I say, that is all you know; that is everything that took place there at that time?
A. Yes, sir.
Mr. Keele: That is all.
Trial Examiner Dudley: That is all.
(Witness excused.)
1830 Mr. Walsh: Recall Steve Luczo.

STEVE LUCZO, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) Mr. Luczo, did you have a talk with Red Hall about a company union at one time?
A. Yes, sir, I did. He came around after the committee was in the office the first time, September 10th; Mr. Hall come around with a blank, and I couldn't read it, because I didn't

understand it, but I see it was on company paper, like from the office, printed on the typewriter; and he told me "Steve, sign that for a company union." That was in the shop, during working hours. I answered, "Why don't you wait, now? The committee was in the office. Why don't you wait until they can have a meeting, and then make a motion, to find out what the rest of the boys want, if they want the C. I. O., or a company union?" At the same time Mr. Schardt passed by—he was my boss,—and he says, "Steve, you better sign this." That's all I know.

Q. Mr. Schardt said that?

A. Yes, sir; Mr. Schardt passed by just at that time.

Q. Then what happened?

A. Well, then he walked up to another man, and I ain't sure exactly what he said, but he shook his head at him.

1831 and he don't ask no questions, but that fellow just write his name down.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) What did you say Schardt said? Just tell us again what Schardt said to you?

A. I was talking to Mr. Hall, foreman on the fourth floor.

Q. Yes.

A. And he asked me to sign for a company union, to build up the company union.

Q. Yes?

A. And I say: "Why don't you wait for a meeting, and then make a motion, to see what the boys want"—

Q. Just a moment.

A. (Continuing) "Make a motion in the meeting, and find out which way they want to go, company union or outside union."

Q. Yes?

A. And at the same time Mr. Schardt passed by, and he told him about it, and he says, "Steve, you are better off if you sign for the company union." Then he walked away from me, and he go to another man, and I don't exactly know what he says to him, but he shake his head, and when the foreman of the fourth floor go there, he sign with no question; he don't read it at the top, to see what it means.

Q. Is Schardt your foreman?

1832 A. Yes.

Q. Did you see what was printed on it?
A. I saw it was printed like official of the company.
Q. Do you mean by that, that it was on the letterhead of the company?
A. Yes.
Q. On the stationery of the company?
A. Yes, because with other stuff they don't go around in working hours.
Q. You did not see what was on the top of it?
A. I didn't read it.
Q. You did not read any of it?
A. I didn't read it, no.
Q. You did not read what was on there?
A. He told me what it was.
Q. You only know what he told you?
A. Well, I didn't ask him, because I didn't pay no attention. I know what a company union means. I used to be in a company union.
Q. How many names were there on the petition?
A. At that time?
Q. Yes.
A. Oh, I don't know; I didn't check it.
Q. Did you see how many names there were on there?
A. There was a bunch already.
1833 Q. A bunch on then?
A. And he go to every man in the shop during working hours.
Q. What is that?
A. During working hours, he go right around in the shop to each man, at his bench, where he is working, on his machine.
Q. You saw him go to all of the men in your department, did you?
A. Yes, all of them; he goes to every man.
Q. Did you see him go into any other department with that paper?
A. Well, I have got to work, you know. I can't follow him up, around, to see where he goes.
Q. You did not hear any more about it after September 10th, did you?
A. That one? No.
Q. You did not hear another thing about it, did you?
A. No.
Q. You did not sign it, did you?

A. Who?
Q. You did not sign the petition?
A. Yes, I do sign it.
Q. You did not?
A. I do.
Q. Oh, you signed it, too?
A. Yes, sir.
1834 Q. After Schardt told you to sign it, you signed it, is that correct?
A. Yes, sure, because he say that I will be better off.
Q. Nearly everybody else signed it, did they?
A. I know just four that didn't.
Q. Just a few who did not?
A. Four or five or six; I don't know exactly.
Q. Who did not?
A. That didn't sign.
Q. Who did not sign?
A. The rest of them were scared.
Q. Did everybody else sign it?
A. Yes, sir.
Q. Do you mean that there were a couple of hundred signatures on it?
A. No, even in the whole plant they haven't got a couple of hundred, so far as I know.
Q. Well, you do not know very much about the plant, then, do you?
A. Oh, yes, I think I know pretty good. I worked there eight years.
Q. Well, you ought to know, then, that there are more than 200, at least. But were there a couple of hundred signatures on there?
A. No.
1835 Q. 100?
A. No.
Q. 50?
A. At that time, they was just beginning.
Q. Just beginning?
A. Yes.
Q. Just started to fill it out?
A. Yes, around one-thirty or two o'clock in the afternoon.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Recall Orville Romppaine.

ORVILLE ROMPPAINE, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh) Mr. Romppaine, at some time did you have a talk with Mr. Schardt about a company union?

A. Yes, sir.

Q. Will you tell the Examiner when it was, where it was, and what was said?

A. Well, to the best of my knowledge, it was around the 10th of September. I worked nights, in the Wire Department then, and about nine o'clock in the evening, or so, some-
1836 where between eight and nine, Mr. Schardt came out with that petition, and asked me to sign it. I asked him, how did the shop react to it. "Well" he said, "the last I heard, most of the shop has signed it."

Q. Yes?

A. So he told me it would be better for me if I signed it.

Q. Did you sign it?

A. Yes, sir.

Q. Do you know what it said on that petition?

A. I didn't pay any attention to the heading on it at all. He said it was for a company union, and I took his word for it.

Q. Did you ever hear anything further of it?

A. Well, a few days later I received—I think it was either a letter, or a book; I can't remember for sure just which it was, now—explaining the whole thing.

Q. Was that a paper like the one that has been introduced in evidence here, marked Board's Exhibit No. 15? Is that what you received?

A. Yes, I think it is.

Q. And that came to you in the—in a plant envelope, did it not?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

1837 Q. (By Mr. Keele.) Had you joined Lodge 66 at that time?

A. Yes.

Q. You had?

A. Yes, sir.
Q. When did you join Lodge 66?
A. I believe it was—wait a minute now.
Q. All right.
A. In August, I think, I joined it. I know I belonged to it, and I think I joined in August.
Q. And it was in September that this petition was brought around, was it?
A. Yes, sir.
Q. And after that one petition was brought around, you did not hear any more about that plan, did you?
A. Except that letter.
Q. Except the letter?
A. Yes.
Q. Nobody ever asked you again to join—
A. No.
Q. —or sign a petition?
A. No.
Q. Nobody asked you to withdraw from the C. I. O.?
A. No.
Q. And that is all you know about any attempt of the company to organize another union?
1838 A. That is all I know.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all.
(Witness excused.)
Mr. Walsh: Recall Clarence Dreyer.

CLARENCE DREYER, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) At one time, Mr. Dreyer, did you have a talk with Mr. Anselm about joining a company union?
A. Yes, sir.
Q. Will you tell the Examiner when it was, and where it was?
A. I believe it was on the 10th of September. I was on the committee that went over to the office to see Mr. Anselm, and at that time he passed out this Employee Representation Plan, in book form; and he asked us to read it

over, and he said he had a plan in his mind that he would offer us, which would be based on the order of the one in the book. He did not say definitely what it was going to be, but he said that it would be on the order of the book form that he gave us. He gave us each a copy, and told us to take it back to the plant, and show it to the employees, and let them read it over.

1839 Q. Did you have a conversation later in the plant about it?

A. Well, not about that book that he gave us, no, sir. The conversation was—

Q. Did you have a talk with him about a company union in the plant?

A. I don't believe I did.

Q. I believe you testified the other day about a conversation that you had in the plant with Mr. Anselm.

A. Yes, sir. That conversation that I had in the plant was over that petition that he had.

Q. What was the—

A. The argument was about signing that petition.

Q. What was the petition for?

A. Well, the petition was, to my knowledge, about that plan that he had offered us in the previous meeting, in the office that morning.

Q. That is, about the employees representation plan that he had talked about in the morning?

A. Yes, sir.

Q. Did he ask you to sign the petition for the employees representation plan?

A. I won't say for sure whether he did or not, because I was called into a discussion that he was having with another man at the time, and the discussion was about signing that petition.

1840 Q. The discussion was with Daluga, is that right?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) When was that conversation?

A. How?

Q. When was it?

A. What conversation?

Q. The one that you have just referred to.

A. The one in the plant?
Q. Yes.
A. Well now, I believe that was shortly after dinner on the same day that we were over to the office.
Q. Well—
A. That is, if I remember rightly.
Q. Well, about when was it?
A. Well—
Q. What date?
A. I am pretty sure that it was the 10th of September.
Q. Very well. Who else was there?
A. Well, the only one that was close enought to hear what we were talking about, to my knowledge, was Daluga.
Q. Daluga?
A. Leo P. Daluga, yes, sir.
Q. And what was said by—was it Mr. Anselm?
1841 A. Mr. Anselm, yes.
Q. What did he say?
A. Well—
Q. Not what you thought he said, or anything like that, but what did he say?
A. Well, at the time I was called—
Q. No, no.
A. At the time I was called into the discussion—
Q. No. Now listen. If you want to make an explanation later, you may do so, but I am not asking you a perfectly simple question. You talked to Anselm—or Anselm had a talk with you; is that right?
A. He was talking to another man.
Q. All right.
A. And I was called into the discussion.
Q. All right. Now, what did you hear Anselm say?
A. I can't tell you the exact words he said, but the discussion was about signing that petition—
Q. No, no. I object to that. I am asking you, what did he say, not what it was. There might be some difference of opinion about that. But what did he say, as near as you can remember, giving it in your own words?
A. When I got there, he was asking Daluga why he wouldn't sign; why he couldn't sign that petition.
Q. All right. Then did he say, "Why can't you
1842 sign that petition?"
A. Yes.
Q. All right. What else did he say?

A. I can't remember exactly the words.

Q. Well, give it in substance, about what he said; not what you thought he said, but what he said.

A. He said after that discussion—after Daluga had told him about not being able to sign that petition because he already belonged to one union—Mr. Anselm said, "Well, I won't bother talking to the rest of the boys in here, but I will be back later on in the day with this petition."

Q. All right. Does that, now, represent everything that Mr. Anselm said on that occasion?

A. As near as I can remember, that is all I remember of him saying while I was there.

Q. Yes, of course.

A. That's all.

Q. As near as you can remember.

A. Yes.

Q. That is all you can remember of his saying on that date, is that right?

A. Yes, sir.

Q. Now, did he say anything to you specifically?

A. No.

Q. Did he direct any remarks to you?

1843 A. Not directly to me.

Q. And that was on September the 10th, 1936?

A. As near as I can recall.

Q. And did Mr. Anselm talk to you about the same subject matter again after that time?

A. No.

Q. Did he talk to anybody else in your presence about the same subject matter?

A. Not in my presence, no.

Q. When did you join the C. I. O., yourself?

A. In July 1936.

Q. And from the time you joined it, up to the date of February the 17th, you were not discharged?

A. No.

Q. And your job was not changed?

A. The job itself was not changed, no, sir, but there were changes made in the rates of pay, and things like that.

Q. There were some increases, were there not?

A. No, they were decreases.

Q. Some decreases?

A. Yes, sir.

Q. Were there not also some increases?

A. Yes, there was increases also, but the increases didn't make up for the decreases.

Q. Well now, let us see about that. There were some 1844 decreases, you say?

A. Yes.

Q. And there were also some increases; is that right?

A. Yes, sir.

Q. Do you know any of the group whose names you have mentioned, whom Mr. Anselm talked to, who were discharged after September 10th?

A. No.

Q. They were all working on February 17th, 1937, were they not?

A. Yes, sir, to my knowledge—the men in my department were.

Q. As far as you know.

A. Yes.

Q. The men you saw daily were there; that is correct, is it not?

A. Yes, sir.

Q. And there was nothing more said to you about that subject matter?

A. Not personally, no, sir; not that I know of, there wasn't.

Mr. Block: That is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: You may step down.

(Witness excused.)

Mr. Walsh: Recall Raymond DuBois.

1845 RAYMOND DU BOIS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. DuBois, did you have a talk with Mr. Henry at any time about joining an employees representation plan?

A. Yes, sir, I did, but not directly on that matter?

1846 Q. Well, supposing you just tell us about when it was, and what he said?

A. It was about the 1st of September, or somewhere in

that neighborhood. I was downstairs, setting up a machine, a punch press, and there was a fellow downstairs there that was standing by the side of the machine, and we was talking to one another and the subject was quite a little of the union; and I presume that got back into the office some way or other.

Mr. Block: Well, now, that is objected to.

Q. (By Mr. Walsh.) All right, all right. Just tell us what happened, and never mind what you thought about the matter.

A. Well, it wasn't very long after that until my foreman, Jack Welch, came up and told me—he says, "Now" he says, "when I send you downstairs, or anywhere around" he says, "don't be talking union." And I says, "All right, Mr. Welch" I says, "I didn't intend to take any active part in the union, but whenever a fellow asks me a question, I intend to be civil." And I asked him, I says, what was the reason that I was called on the pan? "Well" he says, "for talking union." "Well" I says, "I am sorry; but" I says—

Q. By the way, had your conversation about the union, downstairs, been overheard by any person other than the one to whom you were speaking?

A. I don't think so.

Q. To whom were you talking.

1847 A. I can't tell you his name, but—

Mr. Keele: I supposed that would be the answer; that is the logical answer.

Q. (By Mr. Walsh.) It was Johnson, was it not?

A. No; it was a fellow with a long nose.

Mr. Block: With a long nose or a long face.

Mr. Keele: Swanson.

Q. (By Mr. Walsh.) I will ask you whether it was Johnson, to whom you were talking?

A. No, it was not.

Q. It was not Johnson?

A. It was a fellow that helped with the furnaces down there, Stricklen and the other fellow.

Q. Well, all right. Go ahead.

A. (Continuing.) So it wasn't long before I was sent downstairs again, and I ran into Mr. Henry, and I says, "Mr. Henry, I told you before that I didn't intend to take any active part in the union, and so far I didn't intend to. But, Mr. Henry," I says—I told him, "I was trying to be courteous" I says, "to the man"; and I says, "Why call me on the pan?" I says, "Mr. Henry, everybody is afraid of losing their job

if they take any active part in the union. Now" I says, "I have tried to be on the level." "Well he says, do you belong to the union now?" And I says, "Yes." "Well" he says,

"Do you think that that is right?" He says, "You had
1848 union trouble before, didn't you?" And I says "Yes."

"Well" he says, "The company gave you a chance. Do you think that is fair?" And I says, "Well, Mr. Henry" I says, "as I told you, I appreciate my job and all that. But" I says, "if the rest of the boys want to belong to the union, I intend to belong too." I says, "I want to do whatever the men do and stick with them." "Well" he says, " we have got the Social Club"; and he says, "I wouldn't think it would be very fair, after the company gave you a chance." And I says, "Well," I says, "Mr. Henry" I says, "I don't know that they was giving me any more chance than they would anybody else, as long as I do my work."

And that was about all there was about that subject at that time.

Q. Well, did you later talk to him about a company union?

A. No.

Q. Or an employes' representation plan?

A. No, I didn't.

Q. Well, did you talk to Mr. Anselm about a company union at the time?

A. Yes.

Q. Or an Employes' Representation Plan?

A. Yes, sir. There was a time down there a little bit later when Frank Moxey was standing right in front of my tool box, and Mr. Anselm was standing there talking to him;
1849 and I went up to my tool box for some tools, and Mr. Anselm turned around and looked at me, and he says, "Have you read this"—and he presented to me the contract that was given to him by the union. And I says, "Yes, Mr. Anselm", I says, "I have." "Well" he says, "I have something much better than that." He says, "I can give you all that this calls for, with the exception of paragraph No. 1, which is union recognition." And I says, "Well" I says, "I want to be fair with the company and myself, and the rest of the people that is involved". And he says, "Well" he says, "did you ever see anything like this?" And he handed me a copy of practically the same thing as the Employes' Representation Plan from the wire mill; and I had another copy of it at that time; one of those little blue books that we had from the wire mill. I handed him that, and I says

"Mr. Anselm" I says, "that is the same as this, isn't it," I says,—"The Employes' Representation Plan?" And he says, "I don't know." So he referred to it, and I told him, I says, "No, Mr. Anselm" I says, "I wouldn't consider anything like that, because there is a clause in the back of it that says that any clause in here can be turned down by the company, or something to that effect." And I says, "Before I would sign up with a company union like that" I says, "Why, I would be on the picket line tomorrow morning."

Q. Did you have any further talk with him?

1850 A. No, sir. He took both of the papers and beat it downstairs then. He didn't even stop.

Mr. Walsh: You may inquire?

Cross-Examination.

Q. (By Mr. Keele.) He was frightened do you think, was he?

A. Pardon me?

Q. You thought he was frightened at something, did you?

A. No, sir. I just thought he was a little bit sore at me. I didn't know.

Q. Well, you did not join the union or the plan suggested, did you?

A. No, I didn't.

Q. And you were not discharged there until February, were you?

A. No.

Q. You kept right on?

A. I didn't consider myself ever discharged.

Q. You have never been fired, or discharged?

A. I didn't so consider myself.

Q. I see. Now, as I understand it, Anselm was not talking to you, but he was talking to Frank Moxey at the time, was he not?

A. Frank Moxey and myself were both right there, and when I came up and started to get some tools out of my tool box, Mr. Anselm turned to me and handed me that

1851 paper, and asked me if I had ever seen it.

Q. And the rest of his remarks he directed to you, is that right?

A. Well, yes, sir, in general; to some extent it was directly at me, but in general.

Q. You thought he was talking to you?

A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step down.

(Witness excused.)

Mr. Walsh: If the Examiner please, I suggest that the hearing be adjourned at this time until 9:30 in the morning.

Trial Examiner Dudley: The hearing is adjourned at this time until 9:30 tomorrow morning.

(Whereupon, at 5:10 o'clock p. m., Thursday, June 17th, 1937, the above-entitled matter was adjourned until Friday, June 18, 1937, at the hour of 9:30 o'clock a. m., in the Court Room of the Circuit Court of Lake County, Waukegan, Illinois.)

1855 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois
Friday, June 18th, 1937.

The above-entitled matter came on for further hearing pursuant to adjournment, at 9:30 o'clock, A. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by Max Swiren, Harold M. Keele, Suite 2525, One North La Salle Street, Chicago, Illinois; and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

1856 PROCEEDINGS.

Trial Examiner Dudley: I will call the hearing to order. You may proceed.

Mr. Walsh: If the Examiner please, I would like to interrupt the particular phase we are now in, and go back to the testimony of one witness whom I now have available, Joe Lima, who falls in group 2 of the various employees.

Trial Examiner Dudley: Very well.

Mr. Walsh: Joe Lima.

JOSEPH A. LIMA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your full name.

A. Joseph A. Lima.

Q. Talk up so the folks back there can hear you.

A. Joseph A. Lima.

Q. What is your address?

A. At present?

Q. At present.

A. I have been present for the past month or so up in Rhinelander, Wisconsin.

Q. I just now served you with a subpoena to appear in this case, did I not?

A. Yes.

Mr. Swiren: What is his address?

1857 Q. (By Mr. Walsh.) What is your adddress again?

A. Rhinelander, Wisconsin.

Q. Rhinelander?

A. Yes.

Mr. Walsh: My co-counsel is not here this morning. I will ask the Examiner to explain to the witness his privileges under the Act.

Trial Examiner Dudley: Mr. Lima, do you wish the privilege extended to you of immunity from prosecution by reason of any act about which you may testify?

The Witness: Yes.

Trial Examiner Dudley: The privilege is granted the witness.

Q. (By Mr. Walsh.) How long were you employed by Fansteel?

A. I was employed since August 14th, 1936.

Q. What was your job?

A. I was working in the molybdenum reduction, until just about two days before the strike was called. I asked for a transfer to the sintering building, and I was being broken in there.

I didn't assume any duties there yet. I was still learning

Q. When did you join the union?

A. In November, 1936.

Q. What was your hourly rate of pay?

1858 A. At the time I entered the employment, or at the time of the strike?

Q. No. At the time your employment ceased, I am referring to.

A. I was getting 49 cents an hour.

Q. How many hours a week did you work?

A. 40 hours a week.

Q. What did your weekly paycheck amount to, or your weekly pay?

A. Eight times 49.

Q. Approximately $20.

A. Approximately, yes.

Q. When did you draw your last pay from the company?

A. I drew my last pay I think it was on the 5th; it may have been a couple of days after that, the 5th of March.

Q. Did the company take up your pass at that time?

A. No, they did not.

Q. Did you talk to anybody about returning to work at that time?

A. No, I did not.

Q. How much have you earned since February 26th?

A. I have earned nothing. I have been working with my father on the little farm that he has there, and it has been no income at all.

Whatever I have done has been toward a crop this next fall, which may or may not turn out.

1859 Q. Were you one of the men who occupied the buildings of the company—

A. No.

Q. —from February 17th to February 26th?

A. No, I was not.

Q. Did you report for work on the 17th of February, 1937?

A. On the 17th?
Q. Yes.
A. Yes.
Q. Why did you not go to work?
A. Well, I came there—
Mr. Walsh: I will withdraw that question.
Q. (By Mr. Walsh.) What time did you report for work?
A. I reported—it must have been just about ten minutes to three when I reported.
Q. Were you on the night shift?
A. Yes.
Q. Who did you talk with when you reported to work?
A. I rode down with—let's see. I took a stret car down. I don't remember who my partner was for the day.
We went to the gate, and we met another fellow that had just been turned back from the gate. The three of us went to the gate, and they told us we couldn't get in.
Q. Who told you, the watchman, or the guard?
A. The watchman at the gate.
1860 Q. Did he tell you why you could not get in?
A. No. He told us that they were closed, and they wern't letting the men through.
Q. Did he tell you to report later for work?
A. I had no notice of that nature.
Q. Did you later return to go to work?
A. No.
Q. During the time that you worked there did you have any criticism made of your work?
A. I had none made to me at the time.
Q. Did your foreman ever criticise the way you did your work?
A. As I was bringing in the man, we had one night's run that was very poor. He asked me to check on that, and be cautious of that again.
Q. That was a night run of what?
A. Molybdenum powder that we were reducing.
Q. That was during the time you were bringing in a new man?
A. Yes.
Q. Did you receive any raises between the time you entered the company's employ and the time you ceased work?
A. Yes.
Q. What raises were those?
A. I was raised four cents first, and then I was raised five cents later.

Q. Now, that five cent raise was the general five
1861 cent raise that went through the plant?

A. That was the general five cent raise that went through the plant.

Q. Now, during the progress of this strike, did you take any active part in the work of the union?

A. Yes. I was on the outside in the picket line, just to see how things were going.

Q. How long did you serve on the picket line?

A. Well, from the time the strike started until some time in April. I just don't remember the date.

Q. Did you ever make any individual application to return to work?

A. No, I did not.

Q. Would you return to work at the factory now under conditions you think ought to exist?

Mr. Swiren: That is objected to, unless the conditions are specified, so we know what the answer is.

Mr. Walsh: I will reframe the question.

Q. (By Mr. Walsh) Would you return to work at the plant if all the rest of the fellows went back to the plant to work, and the union was recognized?

A. If the union was recognized, I would return to work.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele) Did you take supplies down to
1862 the men that were in the building?

A. Any supplies?

Q. Yes.

A. Yes.

Q. What did you take down?

A. I took down sandwiches.

Q. Did you take anything else down? Did you take any bedding down?

A. No.

Q. Did you take any cigarettes down?

A. No.

Q. Any stoves?

A. I believe at one time I took some flashlight batteries also.

Q. Flashlight batteries?

A. Yes.

Q. Did you take any oilstoves—
A. No.
Q. —or kerosene stoves down there?
A. No.
Q. Are you sure you did not take anything else down there?
A. I took nothing else down there.
Q. How many days were you down there?
A. I was down there every night during the period.
Q. You knew that an injunction had been issued or-
1863 dering those men out of the buildings, did you not?
A. Yes.
Q. Yet you were assisting those men to stay in the buildings, were you not?
A. I was working with those men, and everything that had been passed in there had gone through the inspection of the officers, so I considered that it was no violation.
Q. That is all right, but I want you to answer the question.
A. Yes.
Q. You were doing it to assist those men to stay in there?
A. Yes.
Q. In spite of the fact they had been ordered out of there by a court order?
A. Yes.
Q. Is that correct?
A. Yes.
Q. You do not know what the value of your services will be for the work you are doing now, do you?
A. (No answer.)
Q. You do not know, in other words, what you will receive?
A. No.
Q. You will have to wait until this fall, until the crops mature, and see what they sell for?
A. Yes.
Q. That is a permanent job you have there, is it not?
1864 A. It is not a permanent job.
Q. You can stay there as long as you want, can you not?
A. I could stay there. It is on my father's place. I have no reason to be chased out.
Q. You intend to stay there at the present time for an indefinite period of time?
A. I plan to stay there until I get employment back at the plant.

Q. You made no application—
A. No.
Q. —to the company—
A. No, I haven't.
Q. —for reemployment?
A. No.
Q. And if you had been offered reemployment, you would not have gone back without the return of all the men?
A. I would not have gone back without a union contract.
Q. I say, you would not have gone back without the return of all the men, is that correct?
A. I would have not gone back without the return of all the men, yes.
Q. That is regardless of the reason for their discharge, or whatever conditions may have existed in the plant at that time, is that right?
A. If we was under a contract, that would have been considered—
1865 Q. Answer the question. Do not try to give me any speeches on union contracts.
I say, would you have gone back there unless all the men had been taken back?
A. No, I wouldn't.
Q. You mean by that, regardless of the conditions that existed there, or for what reason they were discharged, they would all have to be taken back, those that were in the plant, before you would go back?
A. All of those with the union, that were in the union.
Q. All of those that were in the union?
A. Yes.
Q. I did not get the amount of money you were making at the time of the strike on February 17th. What did you say your average pay checks were?
A. I was getting 49 cents an hour.
Q. What did that figure out per week?
A. I have not figured it out exactly. I can remember what my checks were at the time. It ran about $20.
Q. About $20?
A. Somewhere in that neighborhood.
Mr. Keele: That is all.
Mr. Walsh: That is all. I have found another person who properly falls in group 1. I would like to put him on at this time.
1866 Trial Examiner Dudley: Very well.

Mr. Keele: Just a minute. I would like to ask Mr. Lima one more question.

Trial Examiner Dudley: Just a moment, before you go, Mr. Lima.

The Witness: All right.

Q. (By Mr. Keele.) You were never discharged by anyone, were you?

A. No.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Frank Moxey.

FRANK MOXEY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Frank Moxey?

A. Yes.

Q. Where do you live?

A. 1722 Jenkins Court.

Q. You were just served with a subpoena to appear here, were you not?

A. Yes.

Mr. Walsh: May I ask the Examiner to advise the 1867 witness of his privilege under the Act?

Trial Examiner Dudley: Mr. Moxey, do you wish to claim the privilege of immunity from prosecution for any acts about which you may testify in this hearing?

The Witness: I don't exactly understand just what you mean?

Trial Examiner Dudley: Ordinarily, in the courts when questions are asked a man, he can refuse to answer those questions if he thinks that testimony can be used to get him into legal trouble later.

However, the Wagner Act provides you must answer such questions in this court, but nevertheless you will be excused or made safe against prosecution for any acts you may testify to.

Do you wish that protection?

The Witness: Yes, I think I do.

Trial Examiner Dudley: The privilcge is granted the witness.

Q. (By Mr. Walsh.) Mr. Moxey, how long were you employed by Fansteel?

A. 21 years last September.

Q. What was your job?

A. Toolmaker.

Q. You worked in the tool room?

A. Yes, sir.

Q. When did you join the union?

1868 A. Well, I think it was in September. I am not sure. I haven't got my card.

Mr. Swiren: Speak up a little louder, please. I cannot hear you back here.

Mr. Walsh: Speak a little louder.

The Witness: In September.

Q. (By Mr. Walsh.) 1936?

A. Yes. I'm not quite sure, but I think so.

Q. What was your hourly rate of pay?

A. 92 cents an hour.

Q. How many hours a week did you work?

A. Well, 40 hours was our regular week.

Q. What did your weekly pay amount to?

A. I don't know exactly. You can figure it out at 92 cents an hour. I think it was about $7.36 a day. That would figure out about $36 or $37 a week.

Q. When did you draw your last pay from the company?

A. February 5th.

Q. February 5th or March 5th?

A. February 5th.

Q. February 5th?

A. Yes.

Q. Were you one of the men who was in the buildings?

A. Yes.

Q. Did you not draw a paycheck after you got out

1869 of the building?

A. No, I never drew it yet.

Q. You have not drawn it yet?

A. No.

Q. The company still owes you for that last half month's work, is that right?

A. Yes.

Q. Plus two days?

A. Yes.

Q. Did you turn your pass into the company?
A. No, I still have it.
Q. Now, at the time the work stopped on February 17th, did the management ask that the work be stopped?
A. Well, they just said there was a strike, and they was going to shut down. That is all I know about it.
Q. As a matter of fact, the work stopped because the men took over the buildings, is that right?
A. Yes.
Q. Have you been offered reemployment by the company?
A. Well, Mr. Groll was up to see me, my foreman, once.
Q. Did you ever talk with him about returning to work?
A. Yes.
Q. What did he say to you, and what did you say to him?
A. He told me if I would come back he could get me my job back, just the same as I had before.
1870 Q. You did not want to go back, is that right?
A. Well, I didn't know for sure—
Mr. Swiren: Speak louder, please.
Mr. Walsh: Keep your voice up.
The Witness: I didn't know for sure whether that was right or not, so I didn't go back. I had heard some didn't get their jobs back as they was promised, so I didn't know what to think about it.
Q. (By Mr. Walsh.) Did you say you have been out of the city for a while just preceding this time?
A. I was away for two weeks. I was called away on account of my mother having a bad fall.
Q. You would return to the plant if all the rest of the men returned to the plant, and the union were recognized, is that right?
A. Yes.
Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?
A. Yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Block.) Mr. Moxey, how long did you work for the company?
A. 21 years.
Q. I mean, before February 17th.
1871 A. How is that??

Q. Before February 17th, 1937, how long had you worked for the company?
A. Well, it was 21 years last September.
Q. When did you join the union in question?
A. I think it was in September.
Q. After you joined the union you retained your same position there; they did not change your job, did they
A. No.
Q. You received the same pay or more, after that?
A. No; the same.
Q. Was there some increase?
A. No. I didn't get any.
Q. You received no increase?
A. No, sir.
Q. You received no increase when the others did?
A. No.
Q. You did in November, did you not?
A. No, sir.
Q. Let us understand each other. You say you did not participate in the general increase in November?
A. November?
Q. Yes; or are you not sure about that?
A. I am quite sure I didn't. I don't remember exactly, but I am pretty sure I didn't.
1872 Q. Anyway, before you joined the union, what were you doing in the plant?
A. Well, I was a tool maker.
Q. Where were you working?
A. In the tool room.
Q. That is, in which building?
A. No. 3.
Q. How long had you worked there?
A. 21 years.
Q. After you joined the union, what were you doing then?
A. I was working in the tool room.
Q. You continued to work there until February 17th?
A. Yes, sir.
Q. On February 17th you voluntarily ceased work, did you not?
A. Yes, sir.
Q. That is, you were not laid off or ordered by the management to quit work or to leave the buildings?
A. No.

Q. You voluntarily with a group of other men ceased work, is that right?

A. Yes, sir.

Q. You joined the other men who sat down and kept those buildings?

A. Yes.

Q. For the period beginning February 17th to Feb-
1873 ruary 26th, is that right?

A. Yes.

Q. You were in those buildings, Mr. Moxey, during the time the sheriff came there on two occasions trying to evict the men who were keeping the buildings?

A. Yes.

Q. You knew about it, did you not?

A. Yes.

Q. You refused to leave, although you knew about an injunction that the Circuit Court of Lake County had issued ordering the men to leave the building?

A. I knew there was an injunction.

Q. Yes. You and the others refused to leave?

A. Yes.

Q. Because of your occupancy of the premises and the buildings, the plant could not be operated and was not operated, is that right?

A. Yes.

Q. After you were evicted on the 26th of February, you left there and went home?

A. Yes, sir.

Q. Then you went out of town, did you?

A. No, I went home.

Q. You went home?

A. Yes.

1874 Q. Some time after that did you leave town?

A. I was up in Menomonee, Michigan, for a visit.

Q. You went somewhere for a visit?

A. Yes.

Q. When did you return?

A. Well, I was gone about two weeks.

Q. You never applied for reemployment yourself?

A. No, I didn't.

Q. Since that date, February 17th, when you ceased work, you have not gone back to the plant at all?

A. No.

Q. You have not made any effort to get a job back there?

A. No.

Q. As a matter of fact, the company came to you and offered employment, and said that you could have your same job back, did they not?

A. Well, my foreman.

Q. Yes. Who was he, by the way?

A. He is the foreman in the tool room.

Q. Was he your foreman?

A. Yes.

Q. When did he offer you that employment?

A. Well, I think that was around April—about April 7th or 8th. I couldn't say exactly.

Q. 1937?

1875 A. Yes.

Q. You refused to go back?

A. Yes.

Q. He told you you would get your same job back?

A. That is what he told me, yes.

Q. Yes. You did not go down there and talk about it any further?

A. No.

Q. You did not go down to discuss it with the superintendent or anyone else at the plant?

A. No.

Q. You just stayed away from the plant entirely?

A. Well, yes. I haven't been there at all.

Q. Now, something was said about the company owing you some money for time prior to February 17th.

The fact is, you never called for your check, is that not right?

A. (No answer.)

Q. The fact is, the check is there for you, and you never called for it?

A. I suppose it is.

Q. And you never went down there to see?

A. No.

Q. What?

A. No, I didn't.

1876 Q. How much should your check be, or would it be, do you know?

A. I don't know exactly. I think somewhere around $90.

Q. They have not refused to give it to you, have they?

A. No.

Q. You are not taking that position, are you?

A. I was going down several times, but I just didn't.
Q. It is just a matter of convenience, and when you can you will; is that what you mean?
A. Yes.
Mr. Block: I think that is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: Just a moment.
Q. (By Trial Examiner Dudley.) Mr. Moxey, have you earned any money since you left the buildings on February 17th?
A. No.
Trial Examiner Dudley: That is all.
Mr. Walsh: That is all, Mr. Moxey.
(Witness excused.)
Mr. Walsh: I will recall Otto Latz.
Trial Examiner Dudley: Which group is this man in?
Mr. Walsh: We will return to the discussion of the company union now.
Trial Examiner Dudley: Very well.
Mr. Walsh: There may be, during the course of the trial, some of these persons that will show up. I regret that
1877 it occurs in that manner, but it is something I cannot help.
Trial Examiner Dudley: That is all right. Proceed.
Mr. Walsh: Otta Latz, take the stand, again.

OTTO LATZ, recalled as a witness for the National Labor Relations Board, being previously sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Latz, did you take any active part in the solicitation of members for the employees' representation plan at Fansteel?
A. Yes.
Q. In the fall of 1936?
A. Yes, I did.
Q. Will you tell the Examiner about that, just what happened?
A. Well, Bill Schultz—
Q. Now, who is Bill Schultz?
A. He is secretary in the superintendent's office.
Q. He is secretary to Mr. Anselm, is he not?

A. Mr. Anselm, yes.

Q. What did Bill Schultz tell you, and what did you do?

A. Bill Schultz brought the petition in. I happened to be in the chemical building office, and he said, "Otto, you take this out for the fellows to put their names down on." He says, "They are under no obligation. If they want to sign, O. K. If they don't, it is all right."

1878 I told Bill I didn't want to go, and he said, "You go out anyway." I says, "O. K." So I took it around the plant, to all the employees in buildings 8, 9 and 2.

Q. Yes. Did a number of the employees sign the petition?

A. I think it was 18 or 23.

Q. You don't remember whether it was 18 or 23, is that right?

A. No.

Q. What were they signing a petition for?

A. It was for—I couldn't say exactly. I would say a company union.

Q. You would call it a company union, is that right?

A. (No answer.)

Q. Did the petition have any writing on the top of it, or any typing?

A. Yes.

Q. Do you remember what it said?

A. No.

Q. Was the petition on plain paper, or was it on the company's letterhead?

A. I don't remember that.

Q. What did you do with the petition after you had obtained the signatures?

A. I took it over to the superintendent's office.

Q. To whom did you give it?

A. I think it was Mr. Anselm.

1879 Q. Did you have any talk with Mr. Anselm when you gave it back?

A. Well, yes, I did. He says, "How many have you got?" I says, "18 or 23," I don't know just what it was.

Q. Whatever the number was, you told him?

A. I told him the exact number.

Q. Yes. Did you ever talk with either Bill Schultz or Mr. Anselm after that about it?

A. No, sir.

Q. Did you talk to any of the other officials of the company about the E. R. P., or the company union after that?

A. I don't think I did.

Q. Do you remember about what month and what day this was that you did that?

A. It was some time in the fall. I can't tell you the month or the date, or anything.

Q. It was some time in the fall of 1936, is that right?

A. Yes.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Latz, when Schultz gave you that petition, did you read what was on the petition?

A. Yes, I did.

Q. What did it say, in substance?

A. I can't remember just what it was.

Q. Was it—

1880 A. I had it—

Q. I understand that you cannot remember exactly what it was. What was the general idea of it, do you recall?

A. It was to organize a company union.

Q. Was it not, as a matter of fact, a petition asking how many were in favor of such a plan?

Was that not it?

A. Yes, something like that.

Q. How many were in favor of an E. R. P. plan, or a plan similar to that?

A. You mean, how many I got signed up?

Q. No. The object of the petition was to find out how many employees in the plant were in favor—

A. Yes.

Q. (Continuing) —of an E. R. P. as it was called, or an employees' representation plan, is that right?

A. Yes.

Q. When Schultz gave it to you, he did not tell you that you were to tell the men that they had better sign it, did he?

A. No, he didn't.

Q. He just said, "Otto, I wish you would take this out and see how many of the men want to sign"?

A. Yes.

Q. Is that about the substance of it?

A. He says, "If they want to sign, O. K., and if

1881 they don't, it is O. K."

Q. In other words, he was anxious to find out how many wanted such a plan?

A. Yes.

Q. Is that right?

A. Yes.

Q. When you went to them, you told them that Schultz said "You can sign if you want to, or you don't have to sign"?

A. Yes.

Q. You told them that Schultz and the management were anxious to find out how many men in the factory would like such a plan, is that right?

A. Yes.

Q. That was all the conversation you had with Schultz about that matter?

A. That is all.

Q. That is the substance of that conversation that you had with each man as you talked with him, is that right, as far as you were concerned?

You did not tell them anything about the fact that the company was anxious to get their names on it, did you?

A. No.

Q. Nothing was done about it after you turned that petition back, was there, that you know of?

A. No.

1882 Q. With reference to the men who signed that petition, none of those men were fired, or discharged?

A. Up until February, no.

Q. None of the men who refused or failed to sign were discharged until February, were they?

A. Not that I know of.

Q. No E. R. P. plan was put into effect in the plant, is that right?

A. What?

Q. No E. R. P. plan was put into the plant, or put into effect?

A. No.

Q. There was no effort made to put such a plan into effect, is that right?

A. No.

Q. In fact, you never heard anything more about it after you turned it back to Anselm, is that right?

A. Yes.

Mr. Walsh: That is all.

Mr. Swiren: Just a minute. I do not know whether that last answer is plain or not.

Mr. Keele: I do not know that the record properly reflects the last answer.

Mr. Reporter, would you read the last question and answer.

(The record was read as above recorded.)

Q. (By Mr. Keele.) In other words, you mean by
1883 that that you did not hear any more about it after you turned the petition back to Mr. Anselm; is that correct?

A. How do you mean?

Q. I think I am confusing you a little. Did you or did you not hear anything more about that employees' representation plan after you turned that petititon back to Mr. Anselm?

A. I don't think I did.

Q. That was the end of it, as far as you know?

A. Yes.

Q. Was there not considerable discussion going on throughout the plant about this time about various unions, and types of unions, craft unions, industrial unions, and so forth?

A. Yes.

Q. The men were talking about it, were they not?

A. Yes.

Q. There was some question as to just what kind of a union was wanted, is that right?

A. (No answer.)

Q. Various men had various opinions, did they not? You will have to answer out loud, so the reporter can hear you.

A. That is right.

Q. The reporter cannot get it when you nod your head.

A. All right.

Q. There were various discussions going on among the men out there about the type of union that was most desirable?

1884 A. Yes.

Q. They were talking about the CIO, the John L. Lewis union at that time?

A. Yes.

Q. They were talking about the American Federation of Labor?

A. Yes.

Q. The craft unions?

A. Yes.

Q. Some of the men knew that an E. R. P. was in effect

at the American Steel & Wire Company, did they not? There were discussions along that line, were there not?

A. They all should have kown about it.

Q. You knew about it, did you not?

A. Sure.

Q. They were discussing various plans that best fitted the Fansteel Company, is that right?

A. I don't know.

Q. There was some discussion going on at that time?

A. There must have been.

Q. This petition that you were asked to take out through the factory was to determine whether or not the employees or some of them favored an E. R. P. plan, was it not?

A. Yes.

Mr. Keele: That is all.

Mr. Walsh: That is all.

1885 Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Walsh: John Germer.

JOHN GERMER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your name.

A. John Germer.

Trial Examiner Dudley: How do you spell it?

The Witness: G-e-r-m-e-r.

Q. (By Mr. Walsh.) What is your address, Mr. Germer?

A. 215 South Orchard.

Q. Waukegan?

A. Waukegan.

Q. You are employed by Fansteel?

A. Yes.

Q. What is your job down there?

A. Roller in the rolling mill.

Q. You were active in the organization of lodge 66, were you not?

A. I was.

Q. You became treasurer of the lodge, did you not?

A. I didn't accept the job.

Q. Well, you were the treasurer, were you not?

A. I didn't accept it. They offered it to me, and I
1886 refused it.

Q. Then you never acted as treasurer of lodge 66—

A. No.

Q. —is that right?

A. Yes.

Q. During the progress of the strike that was on down there you were one of the men who stayed in the buildings, were you not?

A. Yes.

Q. You stayed from the 17th until the 26th of February, did you not?

A. Yes.

Q. After you were finally driven out of the buildings some time later, you returned to work for the company, did you not?

A. Yes.

Q. What job did you get when you came back to the company?

A. The same job that I had before.

Q. That job was what?

A. In the rare metals, rolling rare metal.

Q. Some time after you returned to work, the Rare Metals Workers of America Local No. 1 was organized, was it not?

A. Yes.

Q. You were active in the organization of that lodge, were you not?

A. I was not.

1887 Q. What did you do? You became a member of that lodge, did you not?

A. Yes.

Q. Who asked you to join the lodge?

A. Mr. Sylvin.

Q. Mr. Sylvin?

A. Yes.

Q. When did he ask you to join it?

A. After all the boys joined it down there I joined with them.

Q. How many boys had joined it before you joined it?

A. I don't know.

Q. You do not know?

A. Just in my department, that is all.

Q. Just in your department?

A. Yes.
Q. Did all the boys in your department join it?
A. Yes.
Q. How was it determined that you were going to organize the Rare Metals Workers Union?
A. I don't know.
Q. You do not know that?
A. No, I don't.
Q. It was already organized before you joined, is that right?
A. Yes.
Q. On what date did you join the lodge?
1888 A. I don't remember just exactly what date it was.
Q. Well, what month was it that you joined?
A. (No answer.)
Q. Was it in March?
A. No. Some time in April, I think it was.
Q. Was it the first half of April?
A. Yes, I think it was.
Q. Well, was it the first week in April?
A. I think it was the last part of April.
Q. The last part of April?
A. Yes.
Q. Was it after the pay day in April on the 20th, or was it before the pay day on the 20th?
A. I couldn't say.
Q. How much dues did you pay?
A. We paid 75 cents to join.
Q. Did you get a receipt for that money?
A. They gave us a card.
Q. Do you have your card with you?
A. No, I haven't.
Q. Will you bring that card here?
A. Yes.
Q. Now, did you have an election in the lodge?
A. Yes.
Q. When was the election held?
1889 A. I don't know just what date.
Q. Do you hold any office in the lodge?
A. No, sir.
Q. Where were you when Mr. Sylvin asked you to join this lodge?
A. We were in there one noon hour, down in the plant—
Q. In the plant yard?

A. In our department, yes.

Q. Did you ever see any notice on the bulletin board about the lodge?

A. Just that there was a meeting.

Q. That there was a meeting called?

A. Yes.

Q. When was that meeting called for?

A. Well, I don't know. They wanted to elect different officers.

Q. Did you have a meeting to vote on whether you were going to have such a lodge or not?

A. Yes.

Q. Where was that meeting held?

A. It was held during the noon hour.

Q. Where was it held?

A. In building 3 and building 5.

Q. Now, which of the buildings did you go to?

A. I went to building 3.

1890 Q. You attended the meeting in building 3?

A. There wasn't a meeting; there was just a ballot box.

Q. Oh. They had a ballot box there?

A. Yes, just a ballot box.

Q. Where did you get the ballots?

A. They were just blank ballots.

Q. Blank ballots?

A. Yes.

Q. What do you mean by "blank ballots"?

A. Just a slip of paper that you could write "Yes" or "No" on.

Q. Is this one of them (Handing document to witness)?

A. Yes.

Q. That is one of them, is that right?

A. Yes.

Q. It reads as follows: "Do you as an employee of this company favor an independent labor organization."

Then there is a line, or several lines, and one place that says, "Yes", and one place "No", is that right?

A. Yes.

Q. Who distributed those ballots?

A. Well, there were several members that distributed them.

Q. Who?

A. Sylvin, the acting president at that time.

Q. He was acting president?
1891 A. Yes.
Q. What time of day did he distribute the ballots?
A. During the noon hour.
Q. During the noon hour?
A. Yes.
Q. What time did you vote?
A. That was during the noon hour.
Q. You of course do not know what happened over in building 5, do you?
A. No, I don't.
Q. You just know what happened in your building?
A. Building 3, yes.
Q. Where was the ballot box put?
A. It was right in the lobby when you come in.
Q. In the lobby of building 3?
A. Yes, when you come in.
Q. So after the men came back from the yard—
A. Yes.
Q. —from out in the yard—
A. Yes.
Q. (Continuing) —they voted right in the building, is that right?
A. Yes.
Q. Are there any women employees in building 3?
A. Yes.
1892 Q. Did they also vote right along with the boys?
A. I couldn't say. I didn't stay there very long.
Q. I see.
A. There was some there.
Q. Do you know what day this ballot was had?
A. No, I don't.
Q. You do not know that?
A. No.
Q. Later did you attend a meeting at building 14, in the afternoon?
A. Yes. I think I did, one meeting.
Q. Do you know what time that meeting was held?
A. That was held after working hours. It was after 3:30.
Q. After 3:30?
A. Yes.
Q. Building 14 is inside of the fence, or outside of the fence, which?
A. Outside of the fence.

Q. Outside of the fence?
A. Yes.
Q. That building is normally used by the Vascoloy Ramet Company, is it not?
A. Yes.
Q. How many people attended that meeting?
A. There was quite a few of them. I couldn't say
1893 how many there was.
Q. Who all were there? Just name the people you can think of who were there?
A. Just ourselves. They are all strangers to me now.
Q. They are all strangers now?
A. Yes.
Q. They are new fellows and new girls that have come on?
A. Yes.
Q. Were there some of the old fellows there?
A. Yes.
Q. Was Bill Schultz there?
A. No.
Q. He was not there?
A. No.
Q. Was Schardt there?
A. No.
Q. Simms?
A. Who?
Q. Was Simms there?
A. No.
Q. Was Pressler there?
A. No.
Q. Mr. Anselm was not there, was he?
A. No.
Q. Do you know what day that meeting was held on?
1894 A. I don't know just what day it was.
Q. Since the meeting that was held in building 14, have you held other meetings of the lodge?
A. I think they have, but I didn't attend them.
Q. Have you not attended any of the meetings?
A. No.
Q. Where does the lodge normally meet?
A. Well, they had a meeting place in North Chicago, at some time, some church down there.
Q. You have not attended any meetings since the meeting in building 14, is that right?
A. Yes.

Q. Are you on any committees of the lodge?
A. I am not.
Q. You are not an officer of it?
A. No, I am not.
Q. How much are the dues in that union?
A. I don't know.
Q. Have you paid any dues since the first 75 cents?
A. No, I haven't.
Q. You you know whether anybody else pays dues?
A. I don't know. I have never asked.
Q. At least you have never paid, is that right?
A. I haven't.
Mr. Walsh: That is all.

1895 *Cross-Examination.*

Q. (By Mr. Keele.) How did you happen to come back to work at the Fansteel Company after February 26th, Mr. Germer?

A. I called for my check. Mr. Luther Henry happened to be there, and he asked me how I felt. I told him I was all right.

We got started talking about that, and he says, "Well," he says, "Johnny, do you think you could come back to work?" I says, "I wouldn't mind it." He says, "Well, will you fill out an application?" And I says, "Yes", which I did.

Q. That was about March 3rd or 5th, somewhere along in there?

A. Around the 3rd or 4th.
Q. Of March?
A. Yes.

Q. You filled out your application, and then what happened?

A. Well, I met Jimmy White one day, and I talked with him about it. I asked him "How's chances of going back?" Jimmy says, "Well, you will have to see Mr. Anselm about it."

Q. He said what?
A. That I would have to see Mr. Anselm about it?
Q. Where did you meet Jimmy White?

A. Over on Lewis Avenue, there. He was coming from work one night.

Q. He was what?

A. He was coming from work one night.
Q. Please keep your voice up so I can hear you.
1896 A. All right.
Q. What were you doing?
A. I was going down to the hall, down to Slovenik Hall.
Q. Slovenik Hall?
A. Yes.
Q. Which was the headquarters of the—
A. CIO, yes.
Q. —lodge 66?
A. Yes.
Q. Did you have any further conversation there with Jimmy White?
A. That was about all that I said.
Q. Then what did you do?
A. I went down to see Mr. Anselm.
Q. Did you see him?
A. Yes.
Q. Did you have a conversation with him?
A. I did.
Q. What was that conversation?
A. Well, he asked me if—he says, "Why do you want to come back?" I told him that I had a home, and had some children going to school, and that I could not afford to lay around.
Q. Yes.
A. Mr. Anselm says, "Well", he said, "I will have to see your foreman first."
1897 Q. Who was your foreman?
A. Henry Luther.
Q. You mean Luther Henry?
A. Yes.
Q. What else was said there?
A. That was about all that was said that I can remember.
Q. What did you do then?
A. Well, I waited in the lobby there, in the office.
Q. Whom did you see?
A. Well, nobody. Just then Bill Schultz called me in.
Q. Yes.
A. He asked me to make out a new application.
Q. I see. Then what happened?
A. He asked me to come back to work that afternoon.
Q. You went back to work?
A. Yes.

Q. Did anybody talk to you at that time about the formation of an independent union at the Fansteel Company?

A. No, they didn't.

Q. Did anybody talk to you about getting out of lodge 66?

A. I told Kondrath just before I went back I was through with lodge 66 at that time.

Q. Did anybody in the company talk with you about that?

A. No.

Q. Mr. Anselm, Mr. Luther Henry, Mr. Schardt, or
1898 nobody there talked with you about withdrawing from lodge 66, did they?

A. No. There was nothing mentioned.

Q. Nobody asked you to?

A. No.

Q. Who is Kondrath?

A. He was president of lodge 66.

Q. He was not employed at Fansteel at that time; at least, he was not working there, was he?

A. No.

Q. I mean, at the time you talked to him.

A. No.

Q. Did anybody connected with the management ever talk with you about joining the Rare Metals Workers Lodge?

A. No, they didn't.

Q. Who was the first man who spoke to you about it?

A. Sylvin; he came up there.

Q. All right; what did Sylvin say?

A. He said, "Johnny, I guess you are next," he says, "All of the other boys signed up."

Q. What did you say?

A. I says, "Well, if the other boys all signed up, I might as well sign up with them."

Q. Who is Sylvin?

A. He was acting president of the Rare Metals Association, the way I understand it.

1899 Q. Is he a foreman?

A. No, he is not.

Q. Is he just an ordinary workman?

A. Yes.

Q. In what department is he, do you know?

A. In department 4, swedging, I think.

Q. The swedging department?

A. Yes.

Q. Did you talk with anybody else about your joining the Rare Metals Workers Union?

A. No, I didn't.

Q. Have you heard any threats made, or heard any threats being made that the company would discharge anyone who failed to join the Rare Metals Workers Union?

A. No.

Q. There are a number of men there who have not joined, are there not?

A. Yes. There are quite a few.

Q. They have worked there right along, have they not?

A. Yes.

Q. Was there anything said as to how you should vote in the ballot that was held, by anybody?

A. No.

Q. Did you hear anybody being threatened or coerced in any way with reference to their vote in the ballot?

1900 A. No.

Mr. Keele: That is all.

Mr. Walsh: Just a minute.

Redirect Examination.

Q. (By Mr. Walsh.) How long has Sylvin been there?

A. I don't know just how long he has been there.

Q. Ten years?

A. No.

Q. When did he start, do you know?

A. Right after the strike.

Q. He is not one of the old men, is that right?

A. No, he is not.

Q. What does he do there?

A. He works in the swedging department.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment. I would like to ask a few questions.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Why did you join the Rare Metals Workers Union, Mr. Germer?

A. Because all of the other boys joined it down there in my department.

Q. Did you ever read its constitution and by-laws?
A. No, I didn't.
Q. Did you ever read the purpose of the union, or
1901 hear anybody tell what the union was for?
A. No.
Q. Were you simply going along with the rest of the fellows?
A. With the rest of the fellows, yes.
Q. Would you go along with the rest of the fellows if they did anything down there?
A. I wouldn't.
Q. Suppose all of the fellows resigned from the Rare Metals Workers Union: would you resign with them?
A. I suppose I would.
Q. How much money do you make?
A. 70 cents an hour.
Q. Do you owe the company any money?
A. No, I do not.
Q. (By Mr. Walsh.) What were you making just before the strike?
A. 65 cents an hour.
Q. After you went back you got 70 cents?
A. That was with the raise the boys all got.
Q. Was that in November?
A. Yes.
Q. Have you had any raises since you went back to work, after the strike?
A. Just one raise. I got 65 cents before the strike, and I got a nickel raise with the rest of the new boys that
1902 went back.
Q. Since the boys went back to work, they got a raise, is that right?
A. Yes.
Q. I suppose you also had a raise in November, did you not?
A. Yes.
Q. (By Trial Examiner Dudley.) Did you get paid by the company for the period that the buildings were closed during the strike?
A. Yes.
Q. You got your full salary right through the strike?
A. I think there were a few days that were out.
Q. What days were those?

A. I don't know just exactly.
Q. (By Mr. Walsh.) How much money did that amount to, Mr. Germer?
A. I think it was $37.
Q. Would that be your normal wage for the nine days—
A. Yes.
Q. —the buildings were tied up?
A. Yes.
Q. (By Trial Examiner Dudley.) Does this union have a hall of its own?
A. Sir.
Q. Does this union have a hall of its own?
1903 A. No.
Q. Does it have any property, such as a seal, minute books, flags, chairs, or any such apparatus?
A. I don't know. I didn't inquire about that.
Q. Do you know who the other officers are?
A. Well, I know when they first started Mr. Sylvin was acting president at that time.
Q. How do you spell his name?
A. S-y-l-v-a-n, I think.
Q. Yes.
A. Mr. Griffith is president now.
Q. Mr. Griffith is president now?
A. Yes.
Q. What is his job?
A. He is working on the screw machine.
Q. The what?
A. The automatic screw machine.
Q. Is he a foreman or assistant foreman?
A. No, he is not.
Q. Is he a new employee, or one of the old employees?
A. He is one of the old employees.
Q. How long has he been with the company, do you know?
A. I don't know.
Trial Examiner Dudley: That is all I have.
Q. (By Mr. Keele.) You did understand, Mr. Ger-
1904 mer, at the time you joined this union that it was an independent union, and applied only to the Fansteel employees, did you not?
A. Yes.
Q. That was explained to you?
A. Yes.

Q. Who said that to you?
A. Mr. Sylvin.
Mr. Walsh: Do you know who was eligible—excuse me.
Mr. Keele: That is all right. I was through.
Q. (By Mr. Walsh.) Who is eligible for membership in the union?
A. I don't know.
Q. You do not know who all the union takes in?
A. No, I don't.
Mr. Walsh: That is all.
Mr. Keele: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Theodore Sylvin.

THEODORE SYLVIN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your name, please.
A. Theodore Sylvin.
Trial Examiner Dudley: What is the first name?
A. Theodore.
1905 Q. (By Mr. Walsh.) How do you spell your last name?
A. S-y-l-v-i-n.
Q. Where do you live?
A. Long Lake.
Mr. Swiren: May I ask at this time whether the law applies only to members of the CIO, as to immunity, your Honor?
Trial Examiner Dudley: Do you want to claim privilege on behalf of this witness?
Mr. Swiren: I assume this man however has not committed any crimes.
Mr. Walsh: I do not assume that people who work for your company at this time committed any crimes.
Mr. Keele: We have tried to keep those who have out.
Mr. Walsh: If there is any action that you contemplate—
Mr. Swiren: We are not claiming it.
Mr. Walsh: If you are intending any prosecution against

him, I am sure the privilege will be granted him the same as the others.

Mr. Swiren: We are not claiming it for him. I think it is a personal matter. It has to be claimed by the man. It cannot be claimed by the attorney.

Mr. Walsh: If we are wrong about that, we have done a tremendous amount of useless work.

Mr. Swiren: There is some question about that.

Trial Examiner Dudley: Well, gentlemen, let us proceed.

1906 Q. (By Mr. Walsh.) Mr. Sylvin, you say you live at Long Lake, Illinois?

A. That is right.

Q. I believe you are one of the incorporators of Rare Metals Workers of America Local No. 1?

A. That is right.

Mr. Walsh: Will you mark this for identification as Board's Exhibit No. 31, Mr. Reporter.

(The document referred to was marked Board's Exhibit No. 31.)

Q. (By Mr. Walsh.) I hand you a paper which has been marked for identification Board's Exhibit No. 31, Mr. Sylvin (handing document to witness).

A. Yes.

Q. I will ask you if that is a copy of the charter that the boys signed. Is that your signature there (indicating)?

A. Yes.

Q. That is the application for charter of a corporation not for profit in the State of Illinois, is it not?

A. Yes.

Mr. Swiren: I assume you are not familiar with our Illinois corporations. When this is accepted by the Secretary of State, it becomes the certificate of incorporation; so, as you have it now, it is the certificate of incorporation.

Mr. Walsh: Thank you very much.

1907 Q. (By Mr. Walsh.) This is the certificate of the corporation of your lodge, is it not?

A. Yes.

Mr. Walsh: I would like to offer this in evidence, if the Examiner please.

Mr. Swiren: No objection.

Mr. Keele: No objection.

Trial Examiner Dudley: Board's Exhibit No. 31 may be received in evidence.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 31.)

Q. (By Mr. Walsh.) Mr. Sylvin, when did you start to work for Fansteel?

A. I believe it was around the 7th of March.

Q. Your job is what?

A. Swedging.

Q. Have you worked at that trade in some other plant?

A. No, I have not.

Q. You are just a learner in that department, is that right?

A. Just a beginner, right.

Q. What metals do you work on?

A. Tungsten.

Q. Your job is to take the ingots and reduce them to rods, is that right?

A. Yes.

Q. Where had you worked before, Mr. Sylvin?

1908 A. Before I went to work for Fansteel, I worked for Miller Motor Sales, selling cars.

Q. Selling cars?

A. Right.

Q. Had you ever done any factory work before?

A. Yes. I worked at Johnson Motors some time ago.

Q. Doing what?

A. Assembling.

Q. Assembling?

A. Yes.

Q. How long did you work at Miller Motor Sales, selling cars?

A. About three months, I imagine.

Q. How long were you employed at the Johnson Motor Company, assembling?

A. About three years.

Q. Did you go directly from Johnson Motors to the Miller Company?

A. No, I did not.

Q. Were you unemployed for a period?

A. I was.

Q. And at what did you work during the period that you were not working at Johnson Motors, and were not working at Miller Motor Sales?

A. I was a cost accountant.

Q. A cost accountant?

1909 A. Yes.

Q. Did you have a regular position, or did you have just odd jobs?

A. Well, no. I worked for WPA in the City of Chicago, at Navy Pier.

Q. At Navy Pier you worked as a cost accountant?

A. Yes.

Q. How long did you work there?

A. Just about a year.

Q. About a year?

A. Yes.

Q. That period was between Johnson Motors and Miller Motor Sales, was it not?

A. Yes.

Q. Where did you work before you worked at Johnson Motors?

A. I had a flower shop in Waukegan.

Q. A retail flower shop?

A. Right.

Q. How long did you have that?

A. Well, it was about six months, I imagine.

Q. Before you had a flower shop what did you do?

A. Well, I don't remember offhand. That is going kind of far back.

Q. How far back does that take us in the point of time?

A. Around 1931.

1910 Q. Did you have any employment of any kind prior to 1931?

A. Yes. I worked for my father.

Q. What did you do for him?

A. He is a landscape gardener. I worked in the garden.

Q. You went from the landscape gardening to the flower shop, is that right?

A. That is right.

Q. When did you learn cost accounting?

A. Well, I took no special course in cost accounting. I picked it up. I received a job at WPA, and seemed to do all right, so I kept on.

Q. Were you one of the leading spirits in the organization of the Rare Metals Workers Union?

A. Well, I was chosen by a group of 12 to be temporary chairman until things got going, until we got our charter.

Q. When did the group first have its meeting?

A. I believe it was around the third week in April.

Q. The third week in April was the first meeting of the group?
A. I think so, yes.
Q. Who composed that group?
A. Well, about one man from each department.
Q. Can you tell us their names?
A. I can try to remember them.
Q. All right. Just do the best you can.
1911 Harold Wedell.
Q. He was one of the incorporators, was he not?
A. Yes.
Q. All right.
A. A. R. Johnson.
Q. He was also one of the incorporators?
A. There was another Johnson there. I don't know his name.
Q. All right.
A. Carl Rogers. Offhand, I can't think of any others.
Q. That is half of them?
A. Just about.
Q. With yourself that makes six, does it not?
A. Yes.
Q. Did you have a meeting of this group prior to your incorporation?
A. Yes. We had a meeting to find out whether or not the employees in the plant wanted an independent union.
Q. Where was that meeting held?
A. That meeting was held in building 14.
Q. What was the date of that meeting?
A. I don't know the date. I am sorry.
Q. If I told you it was April 15th at 3:30, would that be right?
A. No, it would not.
Q. It would not be right?
1912 A. No. It was later than that.
Q. It was later than that?
A. Yes.
Q. What would it be? Would it be on the 16th.
A. No.
Q. On the 17th?
A. It would be more like the 20th, or somewhere around that time.
Q. They had a meeting for the purpose of finding out whether they wanted an outside union?

A. That is right.

Q. Your best guess is that it was on the 20th; that is your best recollection at this time, is that correct?

A. Approximately. I am not sure.

Q. Had you filed your application for charter at that time?

A. No, we had not.

Q. You had not?

A. No.

Q. Then let us look at this charter. This is dated—your certificate of incorporation was issued by the Secretary of State on April 19th.

A. The 19th?

Q. Yes.

A. Then you are right, when you say the 18th. I wasn't sure of the date.

1913 Q. I just want to get it straight. I just want to be sure it is right.

A. I wasn't sure of the date. I thought it was later.

Q. You signed this application, or signed this certificate which was verified by Edith B. Miller, who is a notary public in Lake County, on the 17th of April, so it must have been—this meeting—before that, I take it.

A. It evidently was, yes.

Q. So you think probably it might have been on the 15th?

A. Perhaps sooner than that.

Q. I just wanted to get it straight. We just want the record straight, that is all.

A. All right.

Q. Now, let us go back. Do you think now it may have been on the 15th?

A. All right. It may have been, yes.

Q. Tell me about the meeting now.

A. Well, the meeting was called for 3:30.

Q. Who called the meetings?

A. I don't know exactly. There was no acting chairman at that time. That was before—

Q. That was before the organization?

A. Before the organization started.

Q. Did you post any notices around the plant?

A. Yes, we did.

1914 Q. Where did you post notices?

A. We posted them on the bulletin board.

Q. What did the notices say?

A. I believe they said that there would be a meeting in

building 14 to vote on the question of whether or not they wanted an independent union.

Q. Were these notices printed or typewritten?

A. They were typewritten.

Q. Who typed them up for you?

A. I don't know. Hank Berkquist got them somewhere.

Q. Hank Berquist got them somewhere?

A. Yes.

Q. Did you have a vote? Was there a vote taken at that meeting?

A. Yes, there was.

Q. How was the vote taken?

A. You have one of the ballots there.

Q. This is one of the ballots here?

A. Yes.

Q. This is the one I showed to Mr. Germer; is that the one you are referring to?

A. That is right.

Q. Where was the vote taken?

A. It was taken right in building 14.

Q. Then when Mr. Germer told us that there was one
1915 ballot box in building 3, and one ballot box in building 5, he was mistaken, is that right?

A. He got slightly mixed up, because those ballot boxes were for the election of officers after the union was organized.

Q. This election of officers was had by a vote taken where there was one ballot box in building 3?

A. Yes.

Q. Was that in the lobby?

A. That was in the lobby.

Q. Then there was one ballot box in building 5?

A. Yes, there was one ballot box in building 5.

Q. When did that vote take place?

A. I would say about two weeks after we got the charter.

Q. About two weeks after?

A. Something like that.

Q. Just after your organization got going you had that election?

A. Yes.

Q. What did you do, have nominations for officers?

A. Yes.

Q. Now, with reference to those nominations, how were they made?

A. They were made by individuals in the crowd.
Q. Did you have a meeting about that?
A. We did.
Q. Where was that meeting?
1916 A. The meeting was also held, that meeting, in building 14.
Q. That meeting was held in building 14?
A. Yes.
Q. Nominations were made from the floor—
A. Yes.
Q. —by the members, is that right?
A. Yes.
Q. How many people were nominated for the office of president?
A. I think there were three.
Q. Three?
A. Yes.
Q. How many were nominated for vice-president?
A. Three.
Q. How many were nominated for secretary?
A. One.
Q. How many were nominated for recording secretary? Did you have a recording secretary?
A. We didn't have one.
Q. What officers did you have?
A. We had the three that you mentioned, and we had four or six trustees.
Q. Four or six trustees?
A. Yes.
Q. After all of these names were received, were ballots printed up?
1917 A. Yes.
Q. Who printed the ballots up?
A. Hank Berkquist took care of all of that. I don't know where he got them.
Q. Hank Berkquist took care of that, did he?
A. Yes, sir.
Q. Let us go back to the meeting at building 14, on the 15th. How were those ballots distributed?
A. Well, they were distributed by Berkquist, myself, and Roy Grosenheider; they were distributed one to each person.
Q. This ballot that says, "Do you as an employee of this company favor an independent labor organization," and then has a place to vote "Yes", or "No", was the ballot used?

A. Yes.
Q. How many employees attended that meeting?
A. Well, offhand I should say about 200.
Q. About 200?
A. Probably more.
Q. How many voted in favor of the independent labor organization?
A. 186.
Q. 186?
A. Yes.
Q. How many voted against it?
A. I would say 186 or 176, I am not sure.
1918 Q. You are not sure whether it was 176 or 186?
A. No.
Q. Do you remember how many votes were received against?
A. About 14.
Q. About 14?
A. Yes.
Q. That leads you to believe there were about 200 people present?
A. Yes.
Q. Do you think everybody voted?
A. I believe so.
Q. After that meeting was held were there any temporary officers—withdraw that.
At that meeting were there any temporary officers selected?
A. One.
Q. Who headed the organization until you got your charter and had your regular meetings?
A. Well, as I explained, we tried to get one man from each department, or one representative from each department, to have a meeting after we had this vote on this question.
Q. Yes.
A. We met one noon in the maintenance building, that is, in building 5, those 12 men. Those 12 men were there.
Q. They were the same ones who met to arrange this meeting, the calling of this meeting, is that right?
1919 A. No, not exactly.
Q. That is not right?
A. No.
Q. I am sorry. I am mixed up.

A. Berkquist, myself, Chapman and probably another man —I don't remember who really started the whole thing.

Q. Berkquist, Chapman and some other man started it, really?

A. Yes.

Q. How did it happen that you and Mr. Wedell and Mr. Johnson were picked out as incorporators?

A. In this meeting we held in the maintenance building—

Q. I see.

A. —the group decided we should be elected as temporary officers.

Q. Then you consulted a lawyer, didn't you?

A. That is right.

Q. Whose lawyer was that?

A. Why, he is a lawyer up town; Mr. Hendee.

Q. How did you happen to consult Mr. Hendee?

A. Well, I have known him for some time.

Q. Is he your family lawyer?

A. Well, he has done quite a bit of my law work.

Q. Yes.

A. Whatever I have had.

Q. So you were an old client of Mr. Hendee's?

1920 A. Yes.

Q. So you called on him, is that right?, You went to him?

A. Yes.

Q. Had the organization collected any money for dues up to this time?

A. No.

Q. They had not?

A. No.

Q. They had not elected any officers up to this time?

A. No.

Q. They had not designated anyone as acting officers or anything like that?

A. Wedell, Johnson and myself, of course.

Q. You were not selected by the entire group though, were you?

A. No, not by the entire group.

Q. You were selected by the committee, is that right?

A. That is right.

Q. Your charter cost some money, did it not?

A. Yes.

Q. Who put up the money?

A. I did.
Q. How much did you put up?
A. I put up $10.
Q. Have you been paid back the $10?
A. I have.
1921 Q. How have you been paid back?
A. I have been paid back $10 by the organization.
Q. By the organization, after it got the money?
A. That is right.
Q. I presume Mr. Hendee charged some money, did he not, for his work?
A. Right; he did.
Q. Who paid Mr. Hendee?
A. Mr. Hendee told us not to worry about it. He said he didn't know how much work it was going to be.
Q. That is quite right.
A. He said to let it go until after it was all finished.
Q. I presume Mr. Hendee has since rendered his bill, and it has been paid, is that right?
A. I am not an officer any more. I don't have anything to do with it.
Q. We hope Mr. Hendee has been paid, is that right?
A. I hope so.
Q. After the granting of your charter did the organization have meetings?'
A. We held one more meeting.
Q. When was that meeting held?
A. That was after we got the charter.
Q. Then that would be, if this was issued on the 19th, about the 20th, I suppose, would it not? It would be
1922 some time after the 20th, I suppose, that you had a meeting?
A. That is right.
Q. Was that meeting attended by the entire membership—
A. Well—
Q. —or did you have any members at that time?
A. Well, let me get this straight. We had a petition drawn up first.
Q. Oh; a petition. Who drew up the petition?
A. Mr. Hendee.
Q. What did the petition say?
A. The petition stated, I believe, on top, "Do you wish to become a charter member of the Rare Metals Workers of America" or something to that effect.

Q. Something to that effect?
A. Yes.
Q. Did they have more than one copy of the petition?
A. Yes.
Q. How many copies of the petition were there?
A. They had three copies.
Q. Were these petitions circulated?
A. Yes.
Q. Who circulated the petitions?
A. Mr. Johnson, Mr. Wedell, and myself.
Q. The incorporators, then, took the petitions around?
A. Yes.
1923 Q. Where were they circulated, and when?
A. During the noon hour, and after work.
Q. Yes.
A. That is about all.
Q. Are you and Mr. Johnson and Mr. Wedell employed in the same building?
A. No, we are not.
Q. You are all in different buildings—
A. That is right.
Q. —is that right?
A. Yes.
Q. Did you take one to your building, so you would get the gang at noon around that building?
A. That is right.
Q. Johnson and Wedell did the same around their buildings?
A. Yes.
Q. Is that right?
A. Yes.
Q. Did you sign up these fellows as they came out of the building, or talk to them?
A. Why, there had been general conversation.
Q. You were talking all around the shop anyway, were you not?
A. We would ask them to sign it, and if they would, all right.
Q. Those fellows who desired to belong, signed, is that right?
A. Yes.
1924 Q. After the petitions had been circulated, how many names did you find that you had on your petitions?
A. About 220, or something like that.

Q. 220 some persons signed your petitions—
A. Yes.
Q. —to become members of the Rare Metals Workers?
A. Yes.
Q. Is that right?
A. Yes.
Q. Were dues collected at the time they signed?
A. No.
Q. That was just to get the thing going, is that right?
A. That petition was—they had that petition drawn up before we got our charter.
Q. I beg your pardon. I thought it was after.
A. No.
Q. That was before you got the charter?
A. That is right.
Q. Then a petition was circulated, was it, some time before the meeting?
A. I am trying to remember whether we sent for our charter first.
Q. Let us get it straight, and see if we understand each other.
A. I beg your pardon. I made a mistake there.
Q. All right.
1925 A. We had sent for our charter.
Q. You had sent for the charter?
A. Yes.
Q. You do not know whether the charter had gotten back yet, do you?
A. No.
Q. But some time between the time you signed it, and the time the charter got back, the petitions were circulated, is that right?
A. Yes.
Q. All we want to do is to get this thing straight here.
A. All right.
Q. Do you remember how many days it took to circulate the petitions and get all of the names signed?
A. Perhaps two or three days.
Q. Two or three days?
A. Yes.
Q. Now, after the petitions were circulated and as many members as wanted to sign signed, did you have a meeting?
A. Not until we got the charter.
Q. Then the charter came back?

A. Yes.
Q. Then you had a meeting, is that right?
A. Yes.
Q. When was that meeting held?
1926 A. That is the meeting right after we got the charter that I spoke about.
Q. Yes.
A. At that time we nominated officers.
Q. I see. Then, that was the second meeting that was held in building 14, is that right?
A. Yes.
Q. At that time nominations were had, and then the ballots were made up?
A. Yes.
Q. Berkquist took care of making up the ballots, is that right?
A. Yes.
Q. Then the election was run off, and that was done by having a ballot box in building 3, in the lobby, and a ballot box in building 5 in the lobby?
A. Yes.
Q. Is that right?
A. Right.
Q. Now, do you remember, or can you tell me how many votes were cast in the election?
A. No, I can't.
Q. All right. Who finally won the election?
A. Arthur Griffith.
Q. Arthur Griffith was president, was he?
1927 A. Yes.
Q. Who was vice-president?
A. Robert Spellman.
Q. Who was secretary?
A. Lawrence Bristol was secretary.
Q. Who?
A. Lawrence Bristol.
Q. Yes.
A. Some girl was chosen as secretary. I don't remember her name.
Q. I thought you said Bristol was secretary?
A. He was treasurer.
Q. Oh; he was treasurer?
A. Yes.
Q. Some young lady was chosen as secretary, is that it?

A. Betty Valenta, yes.
Q. What was her name?
A. Betty Valenta.
Q. Will you spell her last name?
A. V-a-l-e-n-t-a.
Q. After the election of these officers—withdraw that. How did you notify your members that an election was going to be had?
A. By posters.
Q. By posters?
1928 A. Yes, on the bulletin boards.
Q. You posted those up on the bulletin boards, is that right?
A. Yes.
Q. Who did you talk to about getting permission to post those on the bulletin boards?
A. We spoke to Mr. Anselm.
Q. Did Mr. Anselm say it was all right to put them on?
A. Yes. He said it was all right, just as long as it was not done on company time.
Q. Just as long as you did it on other than company time?
A. Or during our lunch hour, yes.
Q. How many bulletin boards did you post these notices on?
A. There was ten.
Q. I beg your pardon?
A. Ten.
Q. I see. There were that many bulletin boards around the plant at which employees received notices of various kinds?
A. Yes.
Q. How long were the polls open at the election, do you know?
A. From 12 o'clock until 12:30 at noon.
Q. Yes.
A. And from 3:30 until 4 in the afternoon.
Q. In the afternoon?
A. Yes.
Q. That, then, would get everybody that was on the
1929 day shift, and the boys that came on the night shift?
A. That is right.
Q. Is that correct?
A. Yes.

Q. After the election of these people, did you have a meeting of the membership of the local?

A. After election, yes, there was a meeting called.

Q. Can you tell us what date that meeting was held?

A. It was about a week after election; I think that was in May some time.

Q. In May?

A. Yes.

Q. I don't believe we fixed the date of the election, did we? Do you recall what date that was?

A. No. I couldn't recall it.

Q. Where was the meeting of the membership held in May?

A. I don't know whether that was held in the North Chicago Auditorium, or building 14. I wasn't there.

Q. You were not present at that meeting?

A. I couldn't be present.

Q. Then you do not know what happened at that meeting, I supppose?

A. No, I do not.

Q. Sometime after the organization got started, did they fix the amount of dues that were to be paid?

1930 A. Yes.

Q. How much were the dues?

A. Why, the by-laws committee, I believe, set them up as 50 cents a month.

Q. I see. Who was on the by-laws committee?

A. I think it is Henry Berkquist again.

Q. Henry Berkquist again?

A. Yes.

Q. Was he also on the constitution committee? Did you have a constitution?

A. I don't think they did.

Q. Just by-laws?

A. Yes.

Q. All right.

A. And Nick Novack.

Q. Nick Novack?

A. Yes.

Q. Yes.

A. I don't know the rest of them. I don't know who was on it.

Q. Did you later have by-laws drawn up, or typed up?

A. I have not attended a meeting since.

Q. You have not attended a meeting since?

A. So I do not know.
Q. I see.
A. I believe they held a meeting to have the by-laws
1931 read before the group.
Q. Yes.
A. And to vote upon them, I suppose.
Q. All right. Have you attended any meetings of the lodge since?
A. They only had one, or two.
Q. There was a meeting in May, and a meeting in June?
A. No—well, I don't know. I do not know whether they have had or not. I don't think so.
Q. You do not think so. At least, you have not attended any meeting?
A. Yes.
Q. Did they elect a grievance committee?
A. Not as yet.
Q. They have not yet elected a grievance committee?
A. I don't think so.
Q. Have they elected a negotiating committee to negotiate with the company?
A. I think they are working on it now.
Q. They are working on that at this time?
A. Yes.
Q. Do you know how many members the lodge has?
A. Well, a few came in after the petitions.
Q. You got about 200 and how many, on the petitions?
A. Around 223 or 224.
1932 Q. That was the number that was in my mind. I did not know whether I had remembered it correctly or not.
A. Yes.
Q. 223 or 224?
A. Yes.
Q. A few, you think, have come in since?
A. Yes.
Q. Who is eligible for membership in your union?
A. Anyone working in the plant who is on an hourly basis.
Q. I see.
A. In production work.
Q. All production workers on an hourly basis?
A. Yes.

Q. Are there any piece work jobs at the plant now? I understand there have been some changes.
A. No. I do not believe there are.
Mr. Walsh: You may inquire.
Trial Examiner Dudley: Before you cross examine, we will take a five minute recess.
Mr. Walsh: Before we take a recess, may I ask one more question?
Trial Examiner Dudley: Yes.
Q. (By Mr. Walsh.) Were you a deputy during the trouble down there?
A. No.
1933 Mr. Walsh: All right.
Trial Examiner Dudley: We will take a five-minute recess at this time.
(Whereupon a short recess was taken.)
Trial Examiner Dudley: I will call the hearing to order. You may cross examine, Mr. Keele.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Sylvin, how did you happen to obtain employment down at Fansteel?
A. Well, I thought perhaps they would be hiring after the strike.
Q. Did you know anybody down there?
A. No, I didn't, at that time.
Q. How did you get your employment? What did you do to get your employment?
A. I went down at the office and put in an application.
Q. Did they accept the application?
A. They did.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Tony Koncilja.
Trial Examiner Dudley: Which group does this man fall in?
Mr. Walsh: This man is in group 1.
1934 Trial Examiner Dudley: Very well. Proceed.

TONY KONCILJA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your name, please.
A. Tony Koncilja.
Mr. Swiren: You will have to speak up. I cannot hear you.
Mr. Walsh: Keep your voice up, Tony.
The Witness: All right.
Q. (By Mr. Walsh) State your name again.
A. Tony Koncilja.
Q. Will you spell the last name?
A. K-o-n-c-i-l-j-a.
Q. What is your address?
A. 819 13th Street, North Chicago.
Q. You are sick are you not, now?
A. Yes.
Q. You were subpoenaed to come here?
A. Yes.
Mr. Walsh: I will ask the Examiner to advise the witness of his privilege.
Trial Examiner Dudley: Do you wish to claim your privilege of immunity, or do you know what I mean?
The Witness: I don't know what that means.
Trial Examiner Dudley: In most lawsuits, one does
1935 not have to give testimony which can later be used to incriminate him, or get him into legal trouble, about some act about which he may be asked to testify.
The Witness: I don't have any act.
Trial Examiner Dudley: The Wagner Act provides you must testify here, but if you wish you can claim privilege, and be kept free from prosecution on account of the acts you may testify to.
Do you claim your privilege?
The Witness: Yes.
Trial Examiner Dudley: The privilege is granted the witness.
Q. (By Mr. Walsh) How long were you working at Fansteel?
A. About 10 years, or over 10.

Q. What did you do down there?
A. I was in the shipping room, packing stuff and sending it out.
Q. You were packing stuff and sending it out, is that right?
A. Yes.
Q. When did you join the union?
A. September, 1937—1936, I mean.
Q. When did you get your last pay from the company?
A. March; some time in March.
Q. Did the company take up your pass?
A. Yes.
1936 Q. Did you talk to anybody about going back to work?
A. No, I didn't talk to nobody.
Q. What was your hourly rate of pay?
A. 53 cents.
Q. How many hours a week did you work?
A. Mostly 40.
Q. Yes.
A. Sometimes I worked overtime.
Q. How much did your weekly pay amount to?
A. $22.50 or so.
Q. About $22.50?
A. Yes.
Q. Did the plant operate between the 17th and 26th of February?
A. No.
Q. Did you make any shipments out of the plant during that time?
A. No.
Q. You were one of the men who stayed in the building, were you not?
A. Yes.
Q. Have you earned any money since February 26th?
A. Any what?
Q. Have you earned any money since you left the plant down there?
1937 A. No.
Q. You were one of the respondents in the contempt case, and one of the defendants in the injunction case, were you not?
A. (No answer.)
Q. You were tried, were you not?
A. Yes.

Q. You were sentenced to ten days in jail, and $100 fine?
A. Yes.
Q. You have not yet served that time?
A. No.
Q. You are under the doctor's care now?
A. Yes, sir.
Q. When the work stopped on February 17th, the management did not ask you to quit work, did they?
A. No.
Q. The men struck, is that right?
A. That is right.
Q. They stopped work—or rather, all the work stopped because the men took over the buildings, is that right?
A. Yes, sir.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) How long have you been ill?
A. What?
Q. How long have you been ill?
1938 A. (No answer.)
Q. How long have you been sick?
A. Sick?
Q. Yes.
A. I have been sick right after the second gas down at Fansteel.
Q. The second gas.
A. Yes.
Q. What is the nature of your illness or sickness?
A. My sickness?
Q. Yes.
A. I got ulcers of the stomach from that gas.
Q. What?
Mr. Walsh: He says he has ulcers of the stomach.
Q. (By Mr. Keele.) Ulcers of the stomach, you say?
A. Yes.
Q. As a result of that gas?
A. Yes.
Q. That is your opinion?
A. Yes. That is what the doctor said.
Q. That is what the doctor says. So, you have not been able to work?

A. No.
Q. Since the 26th of February?
A. No.
1939 Q. You made no application for reemployment, did you?
A. No.
Q. I see. You have not been able to work?
A. No.
Q. Did you say "Yes" or "No"?
A. No.
Q. If you had had employment offered to you, you could not have taken advantage of it, could you?
A. No, I couldn't take no work at all.
Q. You were in the plant from February 17th until February 26th, were you not?
A. Yes, sir.
Q. Which building were you in?
A. No. 5.
Q. You were in No. 5?
A. No. 5, yes, sir.
Q. There was no gas thrown in that building at the time of the second attack, was there?
A. Yes.
Q. There was?
A. There was plenty of gas. I had one bomb come right in and knock me right down, right through the window.
Q. It knocked you down?
A. Yes. That is why I got so much gas.
Q. Had you ever had any stomach trouble before?
1940 A. No, sir.
Q. None whatever?
A. No.
Q. You never had indigestion, or an acid condition, or anything of that kind?
A. No, nothing in the stomach.
Q. It all began on the morning of the 26th of February?
A. Yes.
Q. You went in there on the 17th with the other men, did you not?
A. Yes.
Q. Nobody kept you in there, did they?
A. No.
Q. You stayed there voluntarily, did you not?
A. Yes.

Q. Of your own wish?
A. Sure.
Q. The sheriff tried to get you out on the 19th, did he not?
A. What?
Q. On the 19th of February the sheriff tried to get you out, did he not?
A. I don't know.
Q. No gas was thrown in on that day, was there?
A. Sure.
Q. You did not leave then, did you?
1941 A. No.
Q. The door was crashed open; you could have come out, could you not?
A. I don't know if it was open or not.
Q. You did not try to get out, did you?
A. I wasn't trying to get out, because maybe I get killed.
Q. Were you not afraid of getting killed on the 26th, when you came out?
A. I was afraid to get killed, sure.
Q. You went out anyway, did you not, on the 26th?
A. Oh, yes, on the 26th, sure.
Q. Were you not afraid of getting killed?
A. I tried to get out anyway.
Q. Who did you think was going to kill you?
A. They throw gas in there.
Q. They threw acid in there?
A. Gas, I say.
Q. Oh; gas.
A. Yes.
Q. What did you do when that attack was going on?
A. I was hiding myself as much as I can.
Q. You were hiding yourself?
A. Sure.
Q. Where were you hiding yourself?
A. Lying down on the floor.
1942 Q. You were lying down on the floor?
A. Yes.
Q. One of these gas bombs hit you while you were lying there on the floor?
A. Sure.
Q. What did you do during the first gas attack?
A. At the first gas, I do the same thing.
Q. The same thing?
A. Yes.

Q. You did not try to get out at any time; nobody was holding you in there, were they?
A. No.
Q. You could have left any time you wanted to, could you not?
A. Sure.
Q. You knew there was a court injunction ordering the men to leave?
A. I didn't know that.
Q. You did not know anything about that?
A. I didn't see it.
Q. You did not see it, but you knew there was one, did you not?
A. (No answer.)
Q. What?
A. I don't know.
Q. Did you not read the papers?
A. No, I didn't get any papers in there.
1943 Q. There were not any newspapers in there, were there?
A. I didn't see nothing.
Q. You did not see anything?
A. I didn't see any papers. I don't know if there was any in there or not.
Q. You did not see any newspapers in there?
A. No.
Q. Newspapers were delivered, twice a day, were they not?
A. I don't know anything about papers.
Q. You do not know anything about that?
A. No.
Q. You do not know who was in the building with you, do you?
A. Yes, I know.
Q. You know that?
A. Yes.
Q. You know the sheriff's men came there on the 19th; you knew that, did you not?
A. I knew what?
Q. You knew they came to the building on the morning of the 19th?
A. I didn't see no sheriff.
Q. You did not see him there?
A. No.
Q. Did you not see him in the yard?

A. I seen him outside. I didn't see him inside.
1944 Q. You knew the sheriff was there trying to get you out, did you not?
A. No.
Q. You did not know that? You do not know anything about what was going on down there, do you?
A. There was a lot of fellows, and I asked them, "What is going on"? They always says, "We don't know what is going on."
Q. You did not know what was going on?
A. That is right.
Q. Do you know whether you had the company's permission to be in the building?
A. To be in there?
Q. Yes. Do you know that, whether you had the management's permission, or the company's permission?
A. For what?
Q. To stay in the building.
A. I don't know that.
Q. You did not know that?
A. No.
Q. Do you know why you went into the building?
A. I just do the same, like the other boys do.
Q. Just whatever they do, you do?
A. That is right.
Mr. Keele: I think that is all.
Mr. Walsh: That is all.
1945 Trial Examiner Dudley: You may be excused.
(Witness excused)
Mr. Walsh: Laverne Huff.

LAVERNE HUFF, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Laverne Huff?
A. Yes.
Q. Where do you live?
A. Gages Lake, Libertyville.
Q. You will have to keep your voice up, please, so all of these gentlemen can hear you.
Where did you say you lived?

A. Gages Lake, Libertyville.
Q. Libertyville, Illinois?
A. Libertyville, Illinois.
Q. Were you ever employed by Fansteel?
A. Yes.
Q. When did you go to work there?
A. I think it was the second week in January.
Q. 1937?
A. Yes.
Q. What do you do down there?
A. I am an assembler, setting up screws.
Q. Is that in the Contact Department?
1946 A. Yes, department 3.
Q. Did you work up until February 17th?
A. When was that, when the strike was?
Q. When the strike happened, yes.
A. Yes. Then I quit. We had to leave.
Q. You had to leave. What building were you in when the strike occurred?
A. Building 3.
Q. When that happened, all of the girls were told to go home, were they not?
A. Yes.
Q. Who told you to go home?
A. I don't know.
Q. Was it Mary Atkinson or Luther Henry?
A. No, it was a man.
Q. Some of the men?
A. Yes.
Q. Some of the men told you that you should go home, that you could not stay there?
A. Yes.
Q. Did you return to work at the company after the strike was over?
A. Yes.
Q. Did you receive pay for the time the buildings were tied up?
1947 A. Yes.
Q. How much did your pay amount to?
A. $19.
Q. Had you ever joined lodge 66?
A. No.
Q. The CIO lodge?
A. No.

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Q. You never had?
A. No.
Q. Did you later join the Rare Metals lodge?
A. Yes.
Q. Who asked you to join the lodge?
A. I don't know. I guess we did it ourselves. I don't know of anybody asking us.
Q. Nobody asked you?
A. All the girls did. I guess that is why I did.
Q. You joined with all of the rest of the girls?
A. Yes.
Q. Did you ever go to any meetings of the lodge?
A. No. We were working nights.
Q. You were working nights when they had their meetings?
A. Yes.
Q. Did you ever go to any meeting of the lodge?
A. No, not after we joined the union.
Q. I beg your pardon?
1948 A. Not after we joined, we didn't go to any.
Q. Did you pay any dues?
A. Yes.
Q. How much dues did you pay?
A. I think I paid 75 cents, I don't know.
Q. Did anyone ever tell you to go to the meetings?
A. No.
Q. Did anybody tell you that you had better join the lodge, or you would lose your job?
A. No.
Q. Did you ever vote in an election which they had?
A. When was that?
Q. Well, did they ever have an election that you knew about?
A. Before our union?
Q. Yes.
A. Yes.
Q. Where did you vote?
A. It was in one of the buildings around there. I don't know which one.
Q. Was it in the building in which you worked?
A. No.
Q. It was not?
A. No.
Q. Was it a building outside of the fence?

A. No.

1949 Q. Was it one of the buildings inside of the fence? Is that right?

A. Yes.

Q. Was there a big crowd there at that time?

A. Yes.

Q. Did you vote whether you should have an inside organization or an outside organization?

A. It was, "Do you want an independent union or not."

Q. I see. Did you have a printed ballot?

A. Yes.

Q. Is this one of the ballots? I mean, does this ballot look like one of them?

A. I think it was, but I am not sure.

Q. How did you know that you were going to have this election?

A. I don't know.

Q. Did somebody tell you, or did you see a notice of it?

A. I cannot remember.

Q. All right. You never went to any meeting of the lodge?

A. No.

Q. Did you get a card from the lodge?

A. Yes.

Q. You paid 75 cents dues.

A. Yes.

Q. You have not paid any other dues?

A. I think I paid 75. I am not sure.

1950 Q. Do you remember what day you joined the lodge?

A. No, I don't, but I think it was about three or four weeks ago.

Q. Do you know who the president of the lodge is?

A. No.

Q. Do you know who any of the officers are?

A. No.

Q. Did you ever vote for any officers? Did you ever have any election to elect officers?

A. Yes.

Q. Were you working there on the 15th of April?

A. I think I was.

Q. Did you go to a meeting that was held about 3:30 in the afternoon, I believe, outside of the fence, over at the Ramet building?

A. Outside of the fence?

Q. Yes.

A. No.
Q. Did you ever attend any meetings held inside of the fence?
A. Before we joined the union?
Q. Before you joined.
A. Yes.
Q. Do you know when that meeting was held? Do you remember?
A. No, I do not.
Q. Do you know who was at that meeting?
1951 A. No, I didn't know anybody.
Q. Who told you to go to the meeting?
A. One of the fellows that was standing there. He told us to go up there, that they were having a meeting, so we went.
Q. Do you remember what building that was in?
A. No, but I think it was where they cut wire, or something.
Q. Where the, what?
A. Where they cut wire, or something.
Q. Where they cut wire?
A. Yes.
Q. Had you ever been in that building before?
A. No.
Q. Do you remember the name of the fellow who told you to go?
A. No.
Q. Would you know that man if you saw him again?
A. No.
Q. Did you ever see any notice on the bulletin board about this union?
A. About which one?
Q. The Rare Metals Union. That is the one you belong to now, is it not?
A. Yes. No, I saw nothing except about the meetings, that there would be meetings.
Q. That is the only thing you saw there, just notices of meetings? Is that right?
1952 A. Yes.
Q. Did you go to any of those meetings?
A. No.
Q. Did Mary Atkinson ever talk to you about the lodge?
A. No.
Q. Did Mr. Anselm ever talk to you about it?

A. No.
Q. You know Mr. Anselm, do you not?
A. Not very well, I don't think I would know him if I saw him.
Q. Do you know whether he is here today?
A. No.
Q. Who is the forelady in your department?
A. Elsie. I do not know her last name.
Q. Did you ever talk to Elsie about this lodge?
A. No.
Mr. Walsh: That is all.
Mr. Keele: That is all.
Trial Examiner Dudley: I would like to ask you a few questions.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) To whom did you pay your 75 cents dues?
A. I do not know the man. It was a fellow who came around collecting it.
1953 Q. What did he say when he came to you to collect your dues?
A. Nothing. He just asked for it, and we gave it to him.
Q. Did he ask you if you belonged to the union?
A. Yes, I think—I don't know. I cannot remember.
Q. Did he ask you if you had paid your dues?
A. No.
Q. Did he say you had not paid your dues?
A. No.
Q. You mean, he just came up and said, "I want your dues"?
A. He came around and collected. We knew what he was collecting for, so we gave it to him.
Q. Did you see him collecting money from the other people who were working near you?
A. I think he did.
Q. Did he ask those people if they belonged to the union?
A. I don't remember.
Q. Did you ever get a card from the union showing you were a member?
A. Yes.
Q. Where is that?
A. I haven't got it with me.

Q. When did you get that?
A. Gee, I can't even remember.
Q. Do you know who signed it?
A. No.

1954 Trial Examiner Dudley: That is all.

Q. (By Mr. Walsh) This is your card, is it not (handing document to witnesss)?
A. Yes.
Q. That card is signed by Mr. Sylvin as president of the lodge, and Mr. Johnson as secretary and treasurer, is it not?
A. Yes.
Q. Did you know either one of those men?
A. No.
Q. Did you ever know that Mr. Sylvin was president of the lodge?
A. I don't know.

Mr. Swiren: Just a moment. I could not hear that last question and answer. Will you read it, Mr. Reporter.

(The record was read as above recorded.)

Q. (By Trial Examiner Dudley) When this man came around and collected your dues, was that during working hours?
A. No, I don't think so.
Q. Where were you, at home?
A. It was around 3:30, I think.
Q. Were you leaving the factory?
A. No. We were just going to start work. We were on the night shift.
Q. You had not started work yet on your night shift, is that right?
A. I don't think so.

1955 Q. (By Mr. Walsh) Have you told us everything you know about this lodge, now?
A. Yes.
Q. Would you object if we put your union card into the record of this trial?

You probably would not get it back. Maybe the union would give you a new one.

A. (No answer.)

Mr. Walsh: You can just leave it with the Examiner here.

Mr. Block: You can substitute a copy, can you not?

Mr. Walsh: I beg your pardon?

Mr. Block: You can substitute a copy.

Mr. Swiren: Why do you not do that, and return the card to her.

Mr. Walsh: All right. We can probably get it photostated, and put a photostatic copy in, and give the card back.

The Witness: When will I get it back?

Mr. Swiren: What was that? Read that, Mr. Reporter.

(The record was read as above recorded.)

Mr. Swiren: That is a perfectly proper question, in view of the Examiner's ruling.

Mr. Block: So there will not be any misunderstanding, do you want to put it in the record?

Mr. Walsh: Yes.

Mr. Block: They want to make a copy of it, and in
1956 the meantime it will be with the Examiner, or in the custody of the attorney for the Board, and it will be returned to you.

Mr. Walsh: In a few days I will mail it back to you. I want to have a picture taken of it, and put it in the record. If you have to have it before then, for any reason, you let us know, and we will get it back to you sooner than that. Perhaps I can get it back to you during the day. I do not know.

The Witness: All right.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Mr. Swiren: Mr. Walsh, did you ask her if she signed this?

Mr. Walsh: I beg your pardon. Mr. Examiner, I would like to ask one more question.

Trial Examiner Dudley: Just a moment, please.

Q. (By Mr. Walsh) Is this your signature on here, on this card?

A. Yes.

Q. You signed that yourself?

A. Yes.

Mr. Walsh: All right.

Trial Examiner Dudley: Have you any questions, Mr. Swiren?

Mr. Swiren: No.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: I would like to offer this in evidence as
1957 BOARD'S EXHIBIT NO. 32, and ask leave to substitute a photostatic copy of it.

Mr. Block: No objection.

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be received.

Mr. Walsh: Let the record show it is blank on the back side.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 32.)

Mr. Walsh: Mr. Johnson.

A. R. JOHNSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your full name and address, please.

A. A. R. Johnson, 20 Wisconsin Avenue, Waukegan.

Mr. Swiren: Keep your voice up, please. I cannot hear you.

Q. (By Mr. Walsh) You are now employed by Fansteel?

A. Yes.

Q. How long have you been employed by Fansteel?

A. About four months.

Q. About four months?

A. Yes.

Q. Did you become employed before the strike, or after the strike?

1958 A. After.

Q. After the strike?

A. Yes.

Q. What job do you have down there?

A. I am in the chemical building.

Q. Talk louder.

A. I am in the chemical building.

Q. You are now in the chemical building?

A. Yes.

Q. I believe you were one of the incorporators of the Rare Metals Workers?

A. Yes.

Q. When did you first start to work for Fansteel, on what day?

A. I believe it was March 3rd.

Q. March 3rd?

A. I think it was.

Q. After the plant reopened, after the labor trouble, you applied for work there, is that right?
A. Yes.
Q. What is your job in the chemical department?
A. Well, it is operating caustics.
Q. That is one of the cooking operations, is it?
A. Yes.
Q. Had you ever done that kind of work before?
A. Very little.
1959 Q. Very little?
A. Yes.
Q. Where had you ever done that kind of work before, Mr. Johnson?
A. I just took a chemical course of my own.
Q. You took a chemical course of your own?
A. Yes.
Q. You had never been employed in chemical work before—
A. No, sir.
Q. —is that right.
A. Yes.
Q. What is your trade or calling?
A. My trade is teamster or crane work.
Q. Teamster and crane work?
A. Yes, sir.
Q. What kind of a crane, a locomotive crane?
A. No; electric cranes.
Q. Electric cranes?
A. Yes.
Q. Where have you operated electric cranes?
A. Well, I have operated electric cranes in California, and at Johns-Manville.
Q. At Johns-Manville?
A. Yes.
Q. Where did you work just before you went to Fansteel.
1960 A. Johns-Manville.
Q. Johns-Manville?
A. Yes.
Q. Have you lived in Waukegan for some time?
A. I was born and raised here.
Q. You were born and raised here?
A. Yes.
Q. How long did you work at Johns-Manville?

A. About eight months.
Q. Where did you work before that?
A. I drove a truck.
Q. You drove a truck?
A. Yes.
Q. Your own truck?
A. No; a teamster's truck; I drove for a contractor.
Q. You drove for a contractor?
A. Yes.
Q. You were working on various jobs, construction work?
A. Various jobs.
Q. How long had you been a truck driver?
A. About ten or twelve years.
Q. I suppose that pretty well covers your working time, does it not?
A. I think it does.
Q. So during the time you have been working, you
1961 have been engaged as a truck driver, an electric crane operator, and now you are engaged in the chemical department at Fansteel, is that right?
A. Yes, sir.
Q. I presume you know that they have labor trouble down there, do you not?
A. Yes.
Q. They had some difficulty with lodge 66, is that right?
A. Yes.
Q. How did you come to assist in the organization of the Rare Metals Workers Union?
A. Well, there was quite a bit of talk around there about organizing. I happened to know this here gentleman, Hank—
Q. Hank Berquist?
A. Hank Berquist. I just asked him about it, and he told me—well, I said, "If I can do anything to help the boys, I will do it", and that is the way it started.
Q. Did you attend any meetings that were held, in which there was talk about getting the organization going?
A. A few.
Q. Where was the first meeting? Do you remember that?
A. The first meeting was when they said there was a group of five or six, I believe, going to the office in fifteen minutes.
Q. Yes.
A. That was the way it first started.
1962 Q. What office did you go to?
A. The head office.

Q. You went over to the head office?
A. Yes.
Q. Who did you talk with over there?
A. Mr. Anselm.
Q. What did you talk with Mr. Anselm about?
A. We told him we was organizing.
Q. What did he say?
A. He said, "Under the labor act you employees have a right to."
Q. Who was in that group that went to see Mr. Anselm?
A. Hank Berkquist, Sylvin, and there was a few others; I don't know their names.
Q. At least you remember Sylvin and Berkquist, anyway?
A. Yes.
Q. You do not remember anybody else at this time?
A. No.
Q. Do you remember about what date that was?
A. That was the first part of the month.
Q. The first part of the month of April?
A. Yes.
Q. Is that right?
A. Yes.
Q. Did you have any further or other meetings?
1963 A. Well, we had meetings to see whether the majority of the folks wanted it or not.
Q. Whether the majority of the people employed wanted an independent organization or did not want an independent organization? Is that right?
A. Yes.
Q. Where was that meeting held?
A. Building 14.
Q. Building 14.
A. Yes.
Q. That was held on what day?
A. I couldn't say offhand what day it was.
Q. If I told you it was the 15th of April, do you think that would be about it?
A. I couldn't tell you the date.
Q. I beg your pardon?
A. I couldn't tell you the date.
Q. You could not tell me the exact date?
A. No.
Q. How did you get notices around to the folks that a meeting was going to be held?

A. Berkquist posted some posters around.
Q. He posted those on the bulletin board?
A. Yes.
Q. Whose permission did you have in the plant to
1964 post them on the bulletin board?
A. Mr. Sylvin got permission.
Q. Did you talk to Mr. Anselm about permission to use the bulletin boards when you were there the first time, when the committee went over to see him and told him they were organizing?
A. Yes, I believe we did.
Q. Did he say at the time it would be all right to put them up?
A. On our own time, and if we did our own work.
Q. But not on the company's time?
A. Yes.
Q. He said it would be all right to post them on the board, is that right?
A. Yes.
Q. Who gave you permission to use building 14?
A. I think Mr. Anselm.
Q. Mr. Anselm?
A. Yes.
Q. Of course, the meeting was held on the men's own time?
A. Yes.
Q. It was held after working hours, was it not?
A. Yes.
Q. Do you remember how many days those notices were up before you had this meeting?
1965 A. It usually runs a day or two days.
Q. About a day or two; just so that everybody knew a meeting was going to be held, is that right?
A. Yes.
Q. How did you get the folks down there?
A. Down where?
Q. Building 14 is outside of the fence, is it not?
A. Yes.
Q. Did someone tell them where to go?
A. It was on the bulletin board.
Q. That was in the notices?
A. Yes.
Q. Did you have anyone outside of the plant gate directing them down to that building?

A. I don't think we did. I don't recall for sure.
Q. You do not recall?
A. No.
Q. No member of the committee directed them down there, is that right?
A. No.
Q. Just what happened at that meeting, Mr. Johnson?
A. They held a vote, to see whether a majority wished to have a Rare Metals Workers Union.
Q. This ballot which I now hand you (handing document to witness) I believe is one of the ballots that was used
1966 there, is that right?
A. Yes, it was.
Q. Hank Berkquist I believe got those, did he not?
A. To my knowledge he did, yes.
Q. To your knowledge Henry Berkquist produced the ballots, is that right?
A. Yes.
Q. Do you recall how many people attended that meeting, Mr. Johnson?
A. Not offhand.
Q. Do you recall the result of the vote?
A. It was about a hundred and eighty-five, or a hundred and ninety, or something similar to that.
Q. One hundred and eighty-five or one hundred and ninety voted for the independent organization?
A. Yes.
Q. Do you remember how many votes were cast against it?
A. Ten or fifteen blanks.
Q. There were ten or fifteen blanks, which means that the people did not vote at all?
A. There were ten or fifteen blanks, yes.
Q. Do you remember how many votes there were against it? Do you remember how many ballots there were which voted "no" on the thing?
A. No, I don't recall.
1967 Q. Do you think that everybody who attended the meeting voted?
A. Yes.
Q. Or at least put a ballot in the box?
A. Yes.
Q. Did you have a regular ballot box there?
A. Yes.

Q. Who counted the votes?
A. There were two judges, and three clerks.
Q. Who selected them?
A. They were selected by the officers.
Q. Who were the presiding officers at the meeting?
A. Sylvin, Wedell and myself.
Q. You just named the judges and tellers to take the vote?
A. Yes.
Q. Now, after the vote was taken, was there any other business transacted at that meeting?
A. The boxes were sealed and taken and put in the vault.
Q. The ballots you say, were sealed?
A. Yes.
Q. And put in the vault?
A. Yes.
Q. In what vault were they put?
A. I believe we got a vault over in the main office to
1968 put them in.
Q. I beg your pardon?
A. In the main office.
Q. The vault in the main office of the company?
A. Yes.
Q. Is that right?
A. Yes.
Q. That is where the company normally keeps its papers, is that right?
A. Yes.
1969 Q. Are they still there?
A. To my knowledge they are.
Q. That was the last you saw of them, is that right?
A. Yes.
Q. Who did you deliver the ballots to, over there?
A. Well, the judges and clerks, took them over.
Q. The judges and clerks took them over?
A. Yes.
Q. They delivered them to some one over at the office, is that right?
A. Yes.
Q. Did you transact any business of any kind at that meeting?
A. No. That was all that the majority of the business was, just the election.
Q. That was just an election to determine whether the fellows wanted that kind of an organization?

A. Yes.

Q. Then as a result of that election, I suppose the committee went forward with the work of incorporating the by-laws, is that right?

A. Yes.

Q. And you participated in that, did you not?

A. Yes.

Q. Just tell me what your part in that thing was.

A. Well, after that was over, we started. We went
1970 up and got a lawyer, which happened to be Mr. Hendee.

Q. Yes. How did you happen to go to Mr. Hendee?

A. Mr. Sylvin said he knew him pretty well, and that we ought to go up there, that it was O. K.

Q. You discussed your problem with Mr. Hendee?

A. Yes, sir.

Q. Did he suggest that you incorporate under the laws of Illinois?

A. Yes.

Q. You instructed Mr. Hendee, did you, to prepare the papers?

A. To prepare the papers, and get a charter.

Q. Was it his idea to incorporate, or your idea to incorporate?

A. That is what we had a vote for.

Q. That was the purpose of your vote?

A. Yes.

Q. It was a vote to incorporate, is that right?

A. Yes.

Q. Did you know that some labor organizations incorporate, and some labor organizations do not incorporate?

A. Some of them do.

Q. What led you to take this particular form for your organization?

A. Well, most organizations do not incorporate.

1971 Q. I beg your pardon?

A. Most of them do not incorporate.

Q. That is right. How did you make up your mind that this was the way you wanted your organization to go?

A. The majority of the boys down there wanted it.

Q. Did the question of whether the organization should be incorporated or not incorporated come before the meeting of the whole group, or was that determined by the committee?

A. The committee.

Q. It was determined by the committee?
A. I am pretty sure, yes.
Q. Who in the committee suggested that you incorporate?
A. It was mostly general talk.
Q. It was just general talk in the committee?
A. Yes.
Q. I suppose some of the folks, some of the boys on the committee knew that some organizations were incorporating under the laws of Illinois, and some were not, and there was general talk about it; then you decided to incorporate, is that right?
A. Yes.
Q. Who put up the money to incorporate?
A. Mr. Sylvin got $10 for the charter.
Q. Do you know where he got the money?
A. No. He borrowed it some place.
1972 Q. Do you know from whom he borrowed it?
A. No, I don't.
Q. Did he ever say who loaned it to him?
A. He said he borrowed it off his check.
Q. Off of his check?
A. Yes.
Q. He drew in advance on his pay, is that right?
A. That is what he said.
Q. At least the $10 that he got came from the company, but it was an advance on his pay, is that right?
A. An advance on his pay.
Q. That would be an advance on his pay for the period ending April 20th, I suppose, would it not?
A. I believe it would be.
Q. So if he did borrow, or get an advance on his pay the company's records would show he had an advance, would they not?
A. I judge they would, yes.
Q. Now, after you applied for your charter—withdraw that.
I will show you Board's exhibit No. 31, which is the charter of your lodge. Is this your signature here? (Indicating.)
A. Yes, sir.
Q. This is the paper that you signed at Mr. Hendee's office, to get a charter, is it not? I mean, this is a photo-
1973 static copy of that paper?
A. Yes.

Q. After you got that charter back, did you have further meetings of the lodge?
A. We had a meeting of election of officers.
Q. Do you recall on what date that was?
A. No, I couldn't.
Q. I beg your pardon?
A. I couldn't.
Q. Were you elected to an office?
A. No, sir.
Q. I have a card here signed "R. Johnson". That would not be you then would it?
A. Yes.
Q. Is that you?
A. Yes.
Q. You signed as secretary and treasurer of the lodge?
A. Yes.
Q. Were you elected to that office?
A. Not elected; that was temporary.
Q. This was in the organization period?
A. Yes.
Q. Is that right?
A. Yes.
Q. This is dated April 23rd.
1974 A. Yes.
Q. That would be just about the time, I suppose, the charter got back, and just before you had your election of officers, is that right?
A. Yes.
Q. How were the officers nominated?
A. They were nominated from the floor.
Q. In a meeting called for that purpose?
A. In a meeting.
Q. Where was that meeting?
A. In building 14.
Q. Do you recall the date on which that meeting was held?
A. No, I do not.
Q. Who gave you permission to use building 14 for that purpose?
A. Mr. Sylvin got permission.
Q. Do you know whom he talked to?
A. No, sir.
Q. At least you held a meeting there, is that right?
A. Yes.
Q. Nobody objected to it"

A. No, sir.

Q. Do you recall what officers were nominated—or rather, what persons were nominated for the various offices?

A. They were all new faces to me.

1975 Q. They were all new to you, were they?

A. Yes.

Q. Well, after the nominations were had, were ballots printed?

A. Yes, sir.

Q. Who had the ballots printed?

A. Hank.

Q. Hank did that again?

A. Yes.

Q. You are referring to Henry Berkquist?

A. Henry Berkquist.

Q. Now, wasn't there later an election of officers, at which these ballots were cast?

A. Yes.

Q. How was that election conducted?

A. That was—

Q. First, what notice was there of the election?

A. There was a notice on the Board of those who were running for office.

Q. That is, the slate was posted on the bulletin board, is that right?

A. Yes.

Q. In what form were those notices? Were they printed notices, or typewritten?

A. They were printed, I believe.

1976 Q. You believe they were printed?

A. Yes.

Q. That was posted on the bulletin board, is that right?

A. Yes.

Q. Do you know whether it was posted on more than one bulletin board?

A. Yes. There is quite a few boards.

Q. There are a number of them around the plant, are there not?

A. Yes.

Q. Do you know whether it was posted on all of the boards or not?

A. Yes.

Q. Did you assist in the posting of them?

A. In posting our building, yes.

Q. In posting your building?
A. Yes.
Q. How many bulletin boards are there in your building?
A. There is one.
Q. There is one?
A. Yes.
Q. That is building 3, is it?
A. Building 8.
Q. Building 8?
A. Yes.
1977 Q. I presume there is a bulletin board in every building, is there not?
A. I guess there is.
Q. That is, every building in which people work?
A. Yes.
Q. Those are boards at which employes usually receive notices that the company desires to give to its employes, is that right?
A. Yes.
Q. How long before the election was held were these notices posted?
A. There was an election of officers, two days, I believe, later.
Q. Two days later?
A. Yes.
Q. Where were the ballot boxes?
A. In the lobbies of these buildings.
Q. What hours were the polls open?
A. From 12:00 to 12:30.
Q. That is, at noon time?
A. Noon. In the afternoon—I don't know if it was 3:00 or 3:30 to 4:00; either one.
Q. Who was in charge of the ballot box in building 3?
A. I don't know.
Q. Do you know who was in charge of the ballot box
1978 in building 5?
A. No, I don't.
Q. Did all the employes who were working in the various buildings around there come into the lobbies of these buildings and cast their ballots?
A. Yes.
Q. How did the ballots get into the hands of the voters?
A. They were handed them, and the names taken.

Q. Each name was checked off, to see that they were entitled to vote?
A. Yes.
Q. I suppose that was checked off from the union list?
A. Yes.
Q. Was there an election committee in charge of the running of the election?
A. There was a committee.
Q. Who was on that committee?
A. That I don't know.
Q. Would that be about the same committee that had assisted in the organization of the lodge?
A. They was picked out of each building.
Q. They were picked from each building?
A. Yes.
Q. From building 5?
A. Yes.
1979 Q. And from building 3, is that right?
A. Yes.
Q. Were the other buildings of the plant represented on the committee?
A. Yes.
Q. Did each building send a representative? Is that right?
A. Each building had somebody there.
Q. Each building had somebody there?
A. Yes.
Q. Were there tellers, and watchers?
A. Tellers, watchers, and judges.
Q. And judges?
A. Yes.
Q. After the ballots were counted, what became of those ballots?
A. Those were sealed.
Q. Where did they go?
A. They were taken over, I think, to the safe, too.
Q. They were put in the company's safe, is that right?
A. Yes.
Q. Do you know who had charge of that?
A. No, I don't.
Q. You do not know to whom they were given over at the office of the company, do you?
A. No.

1980 Q. After the election of officers, were your officers installed?
A. Yes, sir.
Q. Did you have any further meetings after that?
A. After the installation of officers?
Q. Yes. Did you have a meeting for the purpose of installing officers?
A. Yes.
Q. Was there any business transacted at that meeting?
A. Only getting the hall.
Q. Only the getting of a hall?
A. Yes.
Q. Where was the meeting held at which the officers were installed?
A. Building 14.
Q. That was again in building 14, is that right?
A. Yes.
Q. Do you know who obtained permission for the use of that building?
A. The same man that done it the other time.
Q. Mr. Sylvin, is that right?
A. Yes.
Q. You had a meeting there and installed officers. Did you transact any other business at that meeting?
A. Just the getting of another hall.
1981 Q. I beg your pardon?
A. Just the getting of another hall.
Q. Just the getting of another hall?
A. Yes.
Q. Who all attended that meeting?
A. I don't know,—
Q. Did the entire membership of the lodge attend this meeting?
A. A majority.
Q. A majority?
A. Yes.
Q. The officers, then, I suppose entered into their duties, did they not?
A. Yes.
Q. Did they get another hall?
A. Yes.
Q. At which to hold meetings of the membership?
A. Yes.
Q. Where was that hall?

A. On Sheridan Road in North Chicago.
Q. On Sheridan Road in North Chicago?
A. Yes, across from the theater there.
Q. It is a place where the lodge can meet, is that right?
A. Yes.
Q. Did you later formulate any by-laws?
1982 A. Yes.
Q. I presume those were prepared by your counsel, in conjunction with the committee, is that right?
A. Yes.
Q. Who was on the by-laws committee?
A. They were elected by the officers.
Q. The By-laws Committee was selected by the officers, you say.
A. Yes.
Q. Or appointed by the various officers?
A. Yes.
Q. Then, did you have a meeting for the purpose of adopting by-laws?
A. I believe they did.
Q. Just tell us how the by-laws were adopted?
A. I wasn't there at the meeting that night.
Q. You did not attend?
A. No.
Q. For some reason you could not come?
A. I couldn't go. I had another meeting myself.
Q. Were the dues fixed by the by-laws?
A. Yes.
Q. I presume it was the treasurer's duty, or the financial secretary's duty to collect them, was it not?
A. Yes.
1983 Q. How much were the dues in the lodge?
A. Right now they are 50 cents.
Q. A month?
A. Month.
Q. Those dues, I presume, were collected by the financial secretary of the union?
A. Yes.
Q. Do you know who collects the dues?
A. Bristol collected mine.
Q. He collected yours?
A. Yes.
Q. You then, are a member in good standing for the month of June, isn't that right?

A. Yes.
Q. Have you had any meetings in the month of June?
A. Yes, the first part of the month.
Q. Your normal meeting date falls in the first part of each month, does it?
A. Similar to the first part. They havn't got a regular date set yet.
Q. They have not had time to fix the most convenient date for all of the members, is that right?
A. Yes.
Q. Do you have a grievance committee of your union?
A. Yes.
1984 Q. Who is on the Grievance Committee?
A. It is made up of a member from each building.
Q. What is that?
A. A representative from each building.
Q. A representative from each building?
A. Yes.
Q. Who is eligible for membership in your union?
A. Those on an hourly basis.
Q. Excluding, I suppose, foremen, straw bosses, clerical help and salaried people, is that right?
A. Yes.
Q. How many members does your union have now?
A. I don't know; about 230, I believe.
Q. 230?
A. Yes.
Q. At sometime before the organization was actually formed, there were petitions circulated, were there not?
A. Yes.
Q. I beg your pardon?
A. Yes.
Q. I believe you helped circulate one of those, did you not?
A. Yes.
Q. How many members indicated their desire to join—or rather, how many employes indicated their desire to join the independent lodge by signing those petitions?
A. A little over 200, I believe.
1985 Q. A little over 200?
A. Yes.
Q. I believe Mr. Sylvin told me there were 221, 222 or 223, or something like that.
A. Yes.

Q. That is about correct, is that right?
A. Yes.
Q. You have had a few join since that time?
A. Yes.
Q. By signing this petition, that indicated their willingness to become a member when the organization was formed, is that right?
A. Yes.
Q. They did not have to make any further or other application for membership after it was formed?
A. No, sir.
Q. I presume that those who did not become charter members have to fill out a different kind of an application, do they not?
A. Yes.
Q. What form of an application is that?
A. They pay a little different rate on dues?
Q. They have a different rate of dues?
A. Yes, and initiation.
Q. Is there an initiatiion fee now?
1986 A. Yes.
Q. How much is that?
A. I couldn't say offhand.
Q. Was the rate of dues for charter members a little lower than it was for members who came in later?
A. Yes.
Q. What was the rate of dues for charter members?
A. 25 cents.
Q. A month?
A. Yes.
Q. And the present rate for new members is 50 cents, is that right?
A. Yes.
Q. How long does that 25 cents a month rate continue for charter members?
A. That was just for the first month.
Q. Just for the first month?
A. Just for the first month, yes.
Q. Now, everybody pays 50 cents, is that right?
A. That is right.
Q. Have you elected a Negotiating Committee to negotiate with the company concerning hours, rates of pay, and other conditions?
A. I believe the officers have. I am not sure.

Q. You are no longer an officer?
1987 A. No, sir.
Q. Did you talk with any other of the officials of Fansteel, either foreman or above, besides Mr. Anselm when you were discussing the organization of this lodge?
A. No, sir.
Q. Do you know if any of the other boys talked to any foreman?
A. Not to my knowledge.
Q. Who is your foreman?
A. Simms.
Q. Did you ever discuss the fact you were organizing, with Simms?
A. No.
Q. You never have, yourself?
A. Not myself, no.
Q. Did Simms ever say anything to you about it?
A. Yes.
Q. What did Simms say to you about it?
A. That he hoped the organization would go through O. K.
Q. He would like to see it work out, would he?
A. Yes.
Q. The Chemical Building is a little separate and apart from the other buildings, is it not?
A. Yes.
Q. How many men work in that building?
1988 A. About 14.
Q. Are you organized 100 per cent in that building?
A. Yes.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) There were two meetings held in building 14, were there not, Mr. Johnson?
A. Two? I believe there was.
Q. All right. Now, you made some attempt to find a meeting hall elsewhere, did you not?
A. Yes.
Q. You spent one whole night trying to find one here in Waukegan
A. Yes.
Q. Where did you go to try to find a meeting hall?
A. We went to various places, one was the Moose.

Q. You went to the Moose?
A. Yes.
Q. Who did you talk to?
A. The keeper.
Q. I beg your pardon?
A. The keeper.
Q. The keeper?
A. Yes.
Q. What happened there?
1989 A. He would like to have the organization come there, but on account of the trouble, he would rather have us stay away until it was straightened out.
Q. He said he was afraid of violence, did he not?
A. Yes.
Q. Where else did you go?
A. We went to the American Legion Hall. That was a little bit too high for us.
Q. How much money did they want?
A. Around $25.
Q. Who did you talk to there?
A. We talked to the keeper there.
Q. The keeper?
A. Yes. From there we went down to the hall by the North Western Station.
Q. The hall by the North Western Station?
A. Yes.
Q. Who did you talk to?
A. The keeper of that. That was a little bit too dark for the girls down there at that time of night.
Q. Where is that?
A. Down below the hill at Washington Street.
Q. At the east end of Washington Street, on the lake end of Washington Street?
A. On the west side of Washington, half way to the
1990 bottom of the hill.
Q. There is a saloon or two over there, is there not?
A. There is a saloon in front.
Q. A saloon in front and the hall behind?
A. Yes.
Q. You decided you did not want that hall because the environment was not quite right to have the girls come down, is that right?
A. Yes.
Q. Did you go anywhere else?

A. That is about all.
Q. That required the better part of the whole evening, did it not?
A. Yes.
Q. You were delegated to find a hall outside of the company grounds, if possible, is that right?
A. Yes.
Q. You reported that back, did you not?
A. Yes.
Q. That you were unable to find a suitable hall?
A. Yes.
Q. Is that right?
A. Yes.
Q. You reported that to Mr. Anselm, did you not?
A. No. I reported to Sylvin.
1991 Q. Sylvin?
A. Yes.
Q. Do you know whether Sylvin reported that to Mr. Anselm?
A. I don't know.
Q. Then, the second meeting was held the following day, was it not, after your attempts to get those halls?
A. Either the following day or the second day?
Q. It was a day or two after that?
A. Yes.
Q. You were delegated by the Union to get a hall for the second meeting, if possible, is that right?
A. Yes.
Q. You offered to pay the Fansteel Company for the use of that hall, did you not?
A. Yes.
Q. The space was not occupied by anything at the time, was it?
A. No.
Q. It is not a part of the Fansteel Company, or within the fence of the Fansteel Company, is it?
A. No, sir.
Q. It is not operated by the Fansteel Company, is it?
A. Not to my knowledge.
Q. It is about 350 feet from the main gate to building 14, is it not?
1992 A. Something similar to that, yes.
Mr. Keele: That is all.
Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: I suggest we adjourn at this time, if the Examiner please.

Trial Examiner Dudley: We will adjourn the hearing at this time, and reconvene in this room at 1:30 o'clock p. m.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1.30 o'clock p. m.)

1993 After recess.

(The hearing was resumed at 1:30 o'clock p. m. pursurant to the taking of recess.)

Trial Examiner Dudley: You may proceed, Mr. Walsh.

Mr. Walsh: Is Mr. Strickland here?

Mr. Strickland: Yes.

Mr. Walsh: Take the stand, please, Mr. Strickland.

HAROLD STRICKLAND, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your name, please.
A. Harold Strickland.
Q. Where do you live, Mr. Strickland?
A. 2100 Kimball Avenue, North Chicago.
Q. How long have you been employed by Fansteel?
A. 24 years the 5th of July.
Q. I beg your pardon?
A. 24 years the 5th of July.
Q. You are just a youngster out there, is that it?
A. Just a youngster.
Q. What is your job, Mr. Strickland?
A. I am a furnace repairman, electric furnace repairman.
Q. Is that in the sintering department?
A. No. That is a department by itself.

1994 Q. A department by itself?

A. Yes. We work on the furnaces all over the plant. We repair them all.

Q. When a furnace gets out of service—
A. I repair it.
Q. —you repair it?
A. Yes.

Q. Were you one of the men who remained in the plant during the strike?
A. No, sir.
Q. You went out?
A. Yes.
Q. When the strike was called?
A. Yes.
Q. Were you a member of Lodge 66?
A. No, sir.
Q. I beg your pardon?
A. No, sir.
Q. You were not?
A. No.
Q. Are you now a member of the Rare Metals Lodge?
A. Yes.
Q. When did you become a member, Mr. Strickland?
A. The 22nd of May.
Q. The 27th of May?
1995 A. No, the 22nd.
Q. Who asked you to join?
A. Ted Sylvin.
Q. Ted Sylvin?
A. Yes.
Q. Were you one of the charter members who signed the petition?
A. No, sir.
Q. You were not?
A. No, sir.
Q. Where were you when Mr. Sylvin asked you?
A. In my department.
Q. In your department?
A. Yes.
Q. About what time of day was it on the 22nd?
A. About ten after twelve, or so.
Q. About ten after twelve. Had the lodge been formally organized by that time?
A. I believe it had.
Q. It had. Did you attend any meetings?
A. I didn't attend a meeting.
Q. I beg your pardon?
A. I never attended a meeting.
Q. You never have attended a meeting?
A. No.
1996 Q. How much dues have you paid to the lodge?

A. 75 cents.
Q. At the time you joined—
A. That was the first—
Q. I beg your pardon.
A. That was the first initiation fee, and a month's dues.
Q. What was that 75 cents for?
A. A 50 cent initiation fee, and 25 cents for a month's dues.
Q. Did you take any part in the balloting at any time?
A. No, sir.
Q. Did you discuss this lodge or union movement with anybody else—
A. No.
Q. —in the department?
A. No, sir.
Q. Did you ever discuss it with any of the fellows who worked at the plant—
A. No, sir.
Q. —other than those in your department?
A. No, sir.
Q. Did you ever discuss it with the foreman or anybody?
A. No.
Q. You did not hold any office in the lodge?
A. I held no office, no.
Q. Do you know whether the lodge has by-laws, or a 1997 constitution?
A. Well, I have heard they were working on them. That is all I know.
Q. You do not know whether they have been formally adopted or not?
A. No, I don't.
Q. Do you know whether they have a grievance committee?
A. No, I couldn't tell you.
Q. Did you ever see any notices posted around for a meeting?
A. I saw notices posted around for meetings, yes.
Q. You yourself have taken no active part—
A. No active part.
Q.—in the lodge?
A. No.
Q. You never became a member of Lodge 66, did you?
A. No.
Q. Were you asked to become a member of that lodge?

A. Yes.
Q. You decided not to?
A. That is right.
Q. After the strike occurred and the plant opened up, I presume you reported for duty?
A. Yes.
Q. On what date did you go back to work?
A. I went back the 2nd of March, I believe.
1998 Q. The 2nd of March?
A. Yes.
Q. Did you get paid for the time the buildings were tied up?
A. Yes.
Q. Did you have any raise in pay after that?
A. No, I don't believe I did.
Q. I suppose you participated in the general raise?
A. The general raise, yes.
Q. In November, 1936?
A. Yes.
Mr. Walsh: That is all. You may inquire.
Mr. Keele: No cross-examination.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Eric Schultz.

ERIC SCHULTZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your name, please.
A. Eric Schultz.
Q. What is your address?
A. 1018 Pacific, Waukegan, Illinois.
Q. How long have you been employed by Fansteel?
A. About 20 years.
Q. What is your job over there?
1999 A. Stock clerk.
Q. Stock clerk?
A. Stock clerk.
Q. In what department do you carry on your work?
A. In the Contact Department, building 3.
Q. Have you been there for quite a while?

A. Well, I have been in that stock room since about October.

Q. Since October, 1936?

A. 1936.

Q. Are you now a member of the Rare Metals Lodge?

A. I am not.

Q. You are not a member of the Rare Metals Lodge?

A. No.

Q. Have you heard any talk of that lodge around the shop?

A. Well, I heard a word or two; not very much. I heard somebody say something about an independent union. That is about all I heard.

Q. Did you attend a meeting at which a vote was taken as to whether the men would have an inside or an outside union?

A. I attended not exactly a meeting; it was to find out whether they wanted an independent union or an outside union?

Q. Do you remember when that meeting was, Mr. Schultz?

A. Well, I can't say the exact date. It must have been somewhere in April.

Q. Sometime in April?

2000 A. Sometime in April. I am not sure of that. I didn't keep track.

Q. Where was that meeting?

A. That meeting was in building 14, I think. I am not sure.

Q. Building 14?

A. I think that is building 14.

Q. That is the one that is outside of the fence?

A. Outside of the fence, yes, sir.

Q. How did you know a meeting was going to be held?

A. There was a notice on the bulletin board.

Q. Yes.

A. That there was going to be a meeting.

Q. Did you vote at that meeting? Were ballots passed around, and did the people vote?

A. Ballots were passed around, yes.

Q. I believe this is one of the ballots, is it not?

A. (No answer.)

Q. Does that look like the ballots they passed around at that time?

A. Yes, sir.

Q. Did anyone ask you to join this lodge?

A. Yes, sir.

Q. Who asked you to join?
A. Mr. Sylvin.
Q. Mr. Slyvin?
2001 A. Yes.
Q. When did he ask you, do you remember?
A. Well, I can't just remember. It was about—it must have been about a week or two after the meeting, or somewhere in there.
Q. You declined to join the union?
A. Yes.
Q. Did you ever see any other notices on the bulletin board about the activities of that union?
A. I believe I saw another one about a vote. That was the only one.
Q. About an election they were going to have of their officers?
A. Yes.
Q. Did you ever talk to—who is the foreman in your department?
A. Mr. Henry is my foreman at the present time.
Q. Mr. Luther Henry?
A. Yes.
Q. Did you ever talk to Mr. Henry about this lodge?
A. I didn't say anything to him. I didn't say anything to him about it.
Q. Did he ever say anything to you about it?
A. No, he never.
Q. Did you ever talk to Mr. Anselm about it?
2002 A. No, sir.
Q. So all you know about the lodge is what you saw on the bulletin board, is that right?
A. What is that?
Q. I say, all you know about the lodge is what you saw on the bulletin board. Is that right?
A. What I saw on the bulletin board, yes.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Schultz, did anybody ever tell you to join the Rare Metals Union, any foreman, or any member of the management?
A. No.

Q. Did anybody make any threats to you if you did not join?
A. No.
Q. Did you hear any threats in the factory, if you did not join the union?
A. No.
Q. Or if anyone did not join?
A. No, sir.
Q. Do you know whether any other men working out there in the plant were not members of the Rare Metals Workers Union?
A. No.
Q. You do not know whether there are or not?
A. Yes. There are some that are not.
2003 Q. There are some men out there who are not members?
A. Yes.
Q. Do you know who they are?
A. The only one I know is Van Treeck.
Q. Who?
A. Van Treeck.
Q. Van Treeck?
A. Yes.
Q. Do you know whether Mr. Petraitis is?
A. No, I don't.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: Just a minute. I have one question.
Q. (By Trial Examiner Dudley.) When Mr. Sylbin asked you to join the Rare Metals Union, was that during working hours, or outside of working hours?
A. It was rather early in the morning.
Q. Before the day's work started?
A. Before the day's work started, yes.
Trial Examiner Dudley: That is all.
Mr. Walsh: That is all.
(Witness excused.)
Mr. Walsh: Is Frank Ludlow here?
(No response.)
2004 Mr. Walsh: William Van Treeck.

WILLIAM LEO VAN TREECK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your full name, please.
A. William Leo Van Treeck.
Q. Where do you live?
A. On Holdridge.
Trial Examiner Dudley: Will you spell that for us, please.
The Witness: H-o-l-d-r-i-d-g-e.
Trial Examiner Dudley: No, I mean spell your last name.
The Witness: V-a-n T-r-e-e-c-k.
Q. (By Mr. Walsh.) How long have you been employed by Fansteel?
A. 12 or 13 years.
Q. You will have to talk louder.
A. 12 or 13 years.
Q. What is your job?
A. Grinder.
Q. In the Contact Department?
A. Yes, sir.
Q. Were you a member of Lodge 66?
A. Yes, sir.
Q. And did you participate in the strike that oc-
2005 curred there?
A. Yes, sir.
Q. You later returned to work, did you?
A. Yes, sir.
Q. When did you return to work?
A. I returned on the 19th.
Q. Did you get your old job back?
A. Yes, sir.
Q. Did you return to work at the same rate of pay you had been getting before the strike?
A. I used to work piecework. Now, there is no more piecework. I work day work.
Q. It is all hourly work now?
A. Yes.
Q. What are your earnings? Are they more now or less than when you worked on piecework?
A. About the same, sir.
Q. Just about the same?

A. Yes, sir.
Q. Did you receive pay for the time the buildings were tied up?
A. No, sir.
Q. You did not?
A. No.
Q. Did you become a member of the Rare Metals Lodge?
2006 A. No, sir.
Q. Did you hear any talk about that lodge in the plant?
A. No, sir.
Q. Did you attend any meetings to vote as to whether there was going to be an independent lodge or not?
A. Yes.
Q. Was that the meeting we have been talking about that was held in building 14?
A. Yes, sir.
Q. That was around about the 18th of April?
A. I judge so.
Q. You would not remember the exact date?
A. No.
Q. That was held along late in the afternoon, was it not?
A. I guess about three-thirty or four o'clock, something like that.
Q. Just after the day shift finished its work, that meeting was held, was it not?
A. I guess so.
Q. How did you know a meeting was going to be held?
A. I happened to see a notice on the bulletin board.
Q. Did anyone tell you to go to the meeting?
A. No, sir.
Q. Did anyone direct you down there?
A. No, sir.
2007 Q. Did you vote in that meeting?
A. Yes, sir.
Q. The ballots were taken up at that time, were they?
A. Yes, sir.
Q. Did you participate in any way in the organization of that lodge?
A. No, sir.
Q. Did you talk to any of the management about this lodge?
A. No, sir.
Q. Did you talk to any of the other workers about the lodge?

A. No, sir.
Q. Did anyone ask you to join the lodge?
A. Yes, sir.
Q. Who asked you?
A. I think his name is Ted Sylvin.
Q. Ted Sylvin?
A. Yes, sir, I think so.
Q. He is the man who testified this morning, is he not?
A. Yes.
Q. When did he ask you to belong, do you remember?
A. Well, it was in the morning before working hours.
Q. He came in to your department, did he?
A. Yes.
Q. Does he work in the same building you do?
A. The same building.
2008 Q. But in a different department, I believe; is that right?
A. He works in the basement. I work on the first floor.
Q. Do you remember the day he talked to you?
A. No, I do not.
Q. Did you ever see any other notices on the bulletin board about this lodge?
A. I seen a notice about electing officers.
Q. Calling attention to the fact that an election was going to be had to elect permanent officers for the lodge; is that right?
A. Yes.
Q. You were not a member, so it did not interest you very much, is that right?
A. No, sir.
Q. How does it happen you attended the meeting that was held in building 14, Mr. Van Treeck?
A. Sir?
Q. How did you come to attend that meeting they held down in building 14?
A. On the vote?
Q. Yes.
A. Well, everybody was going, so I went too.
Q. It was talked of, I suppose, through the department, was it not?
A. Yes.
2009 Q. You decided you would go down and express your opinion as to whether you wanted an inside union or not, is that right?

A. Yes, sir.
Q. Do you remember what the result of the vote was?
A. No, sir.
Q. Was the result of the vote ever posted on the bulletin board?
A. Not to my knowledge.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) Did anybody threaten you with reference to joining the Rare Metals Workers Union?
A. No, sir.
Q. Did you hear anyone down there being threatened?
A. No, sir.
Q. Did anyone connected with the management, or any member of the force of foremen ask you to join the union?
A. No, sir.
Q. Did they tell you to join the union?
A. No, sir.
Q. You came back to work of your own volition, did you not?
A. Yes, sir.
Q. You were not asked, were you? You came back and applied for your job?
A. Yes.
2010 Q. You did not come back until the 19th of March?
A. Yes.
Q. Is that right?
A. Yes.
Q. The men who came back after the 13th of March did not receive money for the time the sit-down was in progress, is that right?
A. Yes.
Q. The men that came back before that time did?
A. Yes, I guess so.
Q. That is your understanding, anyway, is it not?
A. That is what I heard.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused, Mr. Van Treeck.
(Witness excused.)
Mr. Walsh: Frank Osenek.

FRANK OSENEK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your name, please.
A. Frank Osenek.
Q. Spell the last name, please.
2011 A. O-s-e-n-e-k.
Q. Where do you live?
A. 1023 Jackson Street, North Chicago.
Q. How long have you been employed by Fansteel?
A. About five and a half years.
Q. What is your job?
A. Drawing wire.
Q. What kind of wire?
A. Molybdenum wire.
Q. Were you one of the men who occupied the buildings during the strike?
A. Yes, I was.
Q. You returned to work after the strike?
A. After the first attack.
Q. When?
A. After the first attack I was out.
Q. You went out of the buildings after the first gas attack?
A. Yes.
Q. What day did you get out of the buildings?
A. On the 19th; in the evening, on the 19th.
Q. On the 19th, in the evening; is that right?
A. Yes.
Q. At that time you were a member of Lodge 66, were you not?
A. Yes.
Q. Did you take any active part in the strike after the 19th?
2012 A. No.
Q. Did you help get any food into the buildings?
A. No.
Q. Did you help on the picket line or anything?
A. No.
Q. Had you been on officer of Lodge 66?
A. No.

Q. Just a member, is that right?
A. That is right.
Q. Now, when the trouble broke out on the 17th, did the bosses tell you to stop work?
A. Not the bosses, but a lot of those fellows; a lot of those members.
Q. The committee said to stop work, is that right?
A. Yes, sir.
Q. When did you return to work for the company?
A. When the plant started up again.
Q. As soon as the plant reopened?
A. I think it was about one week after the second attack.
Q. One week after the second attack?
A. Yes.
Q. Did the company take up your pass and give you a new pass?
A. Yes.
Q. Did anybody ask you to come back to work?
A. Yes. My foreman came to the house.
2013 Q. Who is your foreman?
A. Florin Schardt.
Q. Florin Schardt?
A. Yes.
Q. He asked you to come back, is that right?
A. Yes.
Q. You returned?
A. Then I went down to the office and filled out an application.
Q. Did you get any pay for the time the buildings were tied up?
A. Yes. I got paid.
Q. How much pay did you get?
A. I don't know just how much it was. It was around $30, over $30.
Q. Did you get the same rate of pay after the strike as you did before?
A. Yes, sir, the same.
Q. What was your rate of pay before the strike?
A. 65 cents an hour.
Q. How much is your rate, now?
A. The same thing.
Q. The same thing.
A. Yes.

Q. That is on an hourly basis, is it?

2014 A. Yes.

Q. I believe you are now a member of the Rare Metals Lodge, is that right?

A. Yes.

Q. When did you become a member?

A. Oh, about—I don't know just exactly how long ago. I couldn't say that. It was about two months, I guess.

Q. Two months?

A. Or a month and a half.

Q. Who asked you to become a member of the lodge?

A. One fellow who has quit a couple of weeks ago, he came to me and he says, "Do you want to sign it?" And I said, "Yes."

Q. Do you remember what his name was?

A. His first name is Bill.

Q. You do not remember his last name?

A. No.

Q. Was he a new man or an old man with the company?

A. He was working there once before, but he was laid off, and then he worked after that again.

Q. Where did he work, in what department?

A. In the same department.

Q. Your own department?

A. Yes.

Q. Did you hear any talk in the department about this lodge?

A. You mean, about the independent?

2015 Q. Yes, the Rare Metals Lodge.

A. Well, of course, they went around and tried to organize.

Q. Were you one of the men who signed a paper before the lodge was organized?

A. I signed what kind of a paper?

Q. Did you sign any paper before the lodge was organized?

A. I don't know. I couldn't say on that.

Q. Did you go to the meeting that was held in building 14?

A. Yes, I was there.

Q. You voted on the question of whether there should be an independent lodge or not?

A. Yes.

Q. Do you remember how many people were at that meeting?

A. I couldn't say that, but there was a big crowd. There was a big crowd there.

Q. How did you know there was going to be a meeting?

A. Well, the guys came around who started it and they told us to be there at the meeting.

Q. Who was it that told you that?

A. I guess some fellow, the same fellow who gave me a card.

Q. The same fellow who signed you up?

A. Yes.

Q. Do you know who all were down at that meeting?

A. I couldn't say.

Q. The whole crowd was there, is that right?

2016 A. The whole bunch almost, anyway.

Q. Later did you become a memebr of the lodge, right after that meeting, or was it some time afterwards?

A. Well, about a week after that.

Q. About a week after that?

A. Something like that.

Q. Did you go to the meeting where they nominated officers?

A. No.

Q. You did not go to that meeting?

A. No.

Q. Did you know about that meeting?

A. Well, I know, but we don't—nobody else don't go there, just the committee.

Q. Oh, I see. You think there was a committee that went down and nominated the officers, is that right?

A. Yes.

Q. At least you did not go to the meeting, is that right?

A. No.

Q. Did you vote for the officers?

A. Yes.

Q. What building are you in?

A. No. 5.

Q. Building 5?

A. Yes.

Q. Where did you vote?

2017 A. Down below, by the clock.

Q. In the lobby, by the clock?

A. Yes.
Q. Is that right?
A. Yes.
Q. Was there a ballot box there?
A. Yes.
Q. When you came down to vote, did they give you a ballot?
A. Yes.
Q. You indicated, or marked down who you wanted to be officers?
A. Yes.
Q. You put the ballot in a box?
A. Yes.
Q. Is that right?
A. Yes.
Q. Who was in charge of that ballot box? Do you know the man?
A. I think it was Bristol; his name is Bristol.
Q. Bristol was in charge of that ballot box, was he?
A. Yes.
Q. What time of day did you vote?
A. I can't say. I couldn't remember that.
Q. You could not remember?
A. No.
2018 Q. Was it during the lunch hour, or was it after work?
A. The noon hour, yes.
Q. During the noon hour?
A. Yes.
Q. Now, did you go to any other meetings of the lodge?
A. Twice, yes.
Q. Twice?
A. On the outside, yes.
Q. They were not held on the company's property, were they?
A. No.
Q. Where were those meetings held?
A. One of them was in Holy Family, and another one was downtown in North Chicago, at the North Chicago Auditorium.
Q. The North Chicago Auditorium?
A. Yes.
Q. One was in Holy Family Church hall, was it not?

A. Yes.
Q. Who rented that hall for you?
A. I don't know.
Q. Is that your church?
A. No.
Q. You do not go to that church?
A. No.
Q. Do you know anybody from the company that goes to that church?
2019 A. No. Well, I know some workers.
Q. Some workers?
A. Yes.
Q. Do you know any foremen that go to that church?
A. My foreman went to that church.
Q. Who is your foreman?
A. Florin Schardt.
Q. That is Florin Schardt's church?
A. Yes.
Q. Do you know whether Mr. Schardt helped to make arrangements to get the hall?
A. I don't know nothing about that.
Q. What was done at that meeting?
A. I have almost forgot it already. They just kept on going with everything that they was supposed to do.
Q. They held a meeting to talk about dues, did they?
A. Yes.
Q. Did you pay any dues to this lodge?
A. Yes.
Q. How much did you pay?
A. The first time I paid 25 cents, and then I paid 50 cents.
Q. The second time you paid 50 cents?
A. Yes.
Q. When did you pay your last dues?
A. About three weeks ago.
2020 Q. Who did you pay that money to?
A. To the treasurer.
Q. How is that?
A. The treasurer.
Q. Who was the treasurer?
A. Bristol.
Q. That is Mr. Bristol, is it?
A. Bristol, yes.
Q. When did Mr. Bristol get your dues from you?

A. Oh, right in the place, at that North Chicago Auditorium there.

Q. When you went to the meeting at the North Chicago Auditorium—

A. Yes.

Q. —he collected your dues there?

A. Yes.

Q. What happened at that meeting at the North Chicago Auditorium?

A. They just collected dues, and certain things goes on.

Q. The regular business of the lodge, I suppose.

A. Yes. That is right.

Q. Do you know how many members the lodge has?

A. It must have over 230, or something like that.

Q. Did you ever talk about this lodge with Mr. Schardt?

A. No.

2021 Q. You know Mr. Schardt pretty well, do you not?

A. Yes.

Q. Did he ever say anything to you about it?

A. No, not a thing.

Q. Did anybody else, any foreman ever say anything to you?

A. Nobody, no.

Q. Did they talk about the by-laws of the lodge at the meeting?

A. Well, of course they talked about that.

Q. Where did they talk about that?

A. In the meeting.

Q. In the meeting?

A. Yes.

Q. Which meeting was that?

A. I guess it was in both of them.

Q. In both meetings they discussed by-laws, is that right?

A. (No answer.)

Q. Did the members vote on the by-laws, whether they were going to adopt them or not?

A. I can't remember all of that. I just remember some.

Q. They had a membership drive out there at the plant, did they not?

A. Well, I don't know—

Q. Everybody was supposed to be in the lodge by the 9th of June, is that not right?

2022 A. I don't know—I couldn't remember that.

Q. Did you not hear everybody had to join the lodge by the 9th of June?

A. I couldn't say that. I can't remember.
Q. Was it some other date that they had to join the lodge by?
A. No. I can't say that.
Q. Are you on any of the committees?
A. No.
Q. At what time of day was it that Bill asked you to join the lodge?
A. About seven weeks, or something like that. I don't know just exactly.
Q. Do you remember what time of day it was?
A. No.
Q. Was it while you were working?
A. It was at noon hour; I couldn't say the date.
Q. Where were you, down in the yard?
A. No. I stayed right by my job.
Q. You were eating lunch right by your job, were you?
A. Yes.
Mr. Walsh: That is all.
Mr. Keele: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Mr. Anselm, will you take the stand.

2203 A. J. ANSELM, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your name, please.
A. A. J. Anselm.
Q. Where do you live?
A. Lake Bluff.
Q. Illinois?
A. Illinois.
Q. You are the plant superintendent at Fansteel Metallurgical Corporation, are you not?
A. That is correct.
Q. You have been employed by that company for a number of years in one capacity or another, have you not?
A. About 18 years.
Q. I believe for one period of time you were detailed to the Vascoloy Ramet Company as one of their sales engineers?

A. That is correct.

Q. You reassumed your duties as superintendent of the plant about September 8th of this last year, is that right?

A. You have the date correct.

Q. After the trouble had occurred down there, Mr. Anselm, did you have a talk with the committee who were organizing the Rare Metals Lodge?

A. I did.

2024 Q. I believe that was Mr. Johnson, Mr. Sylvin, and Mr. Berkquist?

A. That is the committee.

Q. Was there anybody else on that committee?

A. I believe that accounts for them all.

Q. They advised you at that time I believe that they were about to organize an independent labor organization, did they not?

A. Correct.

Q. They asked your permission to use the bulletin board for posting notices, is that right?

A. No. They didn't ask on that day.

Q. Did they ask you at a later day?

A. Yes, they did.

Q. You gave them permission to use the bulletin board?

A. I did.

Q. What was the subject of the first conference that you had?

A. They wanted to use the unoccupied space in building 14.

Q. I see.

A. The first floor is rented to Vascoloy Ramet. The second and third floors are vacant.

Q. I see.

A. I called our chief counsel and asked him whether I could let them have that space. He said, "If there is no

2025 place for them to go, let them have it."

Q. You were advised, I take it, at that time there was no available space for them to meet in?

A. I was.

Q. Do you recall about when that took place in the point of time, Mr. Anselm?

A. Maybe between the 12th and the 15th of April.

Q. Do you recall if they did avail themselves of the space, and hold a meeting there?

A. I would not know, only by hearsay.

Q. You have heard the men testify here to that, have you not?

A. Yes.

Q. I suppose you issued instructions to the person in charge of that building that it was all right for them to meet there, is that right?

A. There does not happen to be anybody in charge of that building. It has an outside stairway.

Q. It did not necessitate any formal work on your part then, is that right?

A. It is accessible from the outside.

Q. It is outside of the company's fence, I believe, is it not?

A. Yes.

Q. Do you know whether they met there on more
2026 than one occasion?

A. I believe not. I heard they met there twice.

Q. They told you they were unable to get another place suitable for a meeting at that time?

A. I heard about that.

Q. They needed some place to meet?

A. Yes.

Q. Now, after the vote that they conducted in the building, it has been testified here today they brought the ballots over and put them in the company's safe; is that right?

A. They brought those over and asked for permission to put them in the safe.

Q. Did they ask you about that?

A. They asked somebody in the office. They did not ask me.

Q. Whoever was in charge said it would be all right, is that right?

A. They stuck them up on the shelf somewhere.

Q. I presume this vault that they put them in was where the company keeps its ordinary records, is that right?

A. I believe that is an unused vault.

Q. An unused vault?

A. Yes.

Q. You have heard the testimony here today in which the men stated that after the election of officers the ballots were sealed up, and placed in the company's vault?

2027 A. I believe the only ballot they have reference to is the first one.

Q. The first one, as to whether they should have an independent organization?

A. I don't know what happened to their other ballots.
Q. You do not know whether they are in the vault or not?
A. No, I don't.
Q. So if they took them over there and gave them to somebody to put in the vault, you would not know about it?
A. I would not, no.
Q. I see. Did they use the company's mimeograph machine for the purpose of mimeographing the ballots?
A. They may have.
Q. I beg your pardon?
A. They may have.
Q. I notice from this ballot it appears to be the same type, and to have the same color of ink, and the same general composition as your mimeograph.
A. It may have been run off on our mimeograph machine. I couldn't say.
Q. You did not see it run off.
A. No.
Q. It just occurred to me that it looked like your mimeograph type. I thought perhaps that was, that is all.
You would not know, is that right?
2028 A. I would not know.
Q. Did you have any further or other meetings with this committee before the lodge was organized?
A. No. I believe the two contacts mentioned—
Q. They would cover the meetings, is that right?
A. That would cover it.
Q. By the way, did they ask you whether they could have someone in the office run off the ballots?
A. Yes.
Q. Did you tell them they could have someone run them off?
A. I told them to go upstairs, and see what they could do about it.
Q. By that you meant that they could go up and talk to someone in the general office?
A. Yes.
Q. Do you know who they would have talked to up there?
A. Possibly the operator; I don't know.
Q. The mimeograph operator, I suppose, in the normal course is the person they would have to talk to.
Do you know whether they had their election ballots mimeographed there?
A. I would not know about that.

Q. Did they ask you whether they could?
A. No.
Q. So, if they asked and received permission to have
2029 them mimeographed, they would probably have asked the machine operator, is that right?
A. They might.
Q. After the lodge was organized, and became the functioning organization, did you have any contact with them?
A. I had contact with their officers. Griffith, Spellman,—I believe the rest are trustees. They would be Eria Nelson—that is her name now—Anna Stokes, a chap by the name of Schardt, but not Florin Schardt—
Q. Is that George Schardt?
A. It might be George.
Q. I think George is paymaster, is he not?
A. I believe so.
Q. What was the subject under discussion at that time?
A. They said that they had formed an organization and elected officers, had a membership of 226 employees, and asked for recognition.

My reply was that we wanted proof of that majority, and proof of their membership. They said they would furnish it by taking up the membership cards and presenting them at the next meeting. That meeting was then arranged.

Q. That meeting was what?
A. That meeting was then arranged.
Q. Yes.
A. The next meeting our counsel Max Swiren at-
2030 tended. There was also Lew Hendee, the attorney for the Rare Metals Amalgamated, and the same committee.
Q. I beg your pardon?
A. That same committee.
Q. Yes.
A. They brought in their cards with them which Mr. Swiren asked permission to photostat. I believe he has the photostats now. I believe at that meeting there, Mr. Swiren told us that undoubtedly they had a majority, and under the law they deserved recognition, and we would recognize them.
Q. Do you recall what they said as to what their requirements for eligibilty were?
A. Yes. I think at that time they were taking the employees working on an hourly basis.
Q. By that time I understand, from the testimony that has

been given, you had changed the basis of pay in the plant, had you not?

A. Yes.

Q. Some of the piecework jobs had been eliminated?

A. Yes. We abolished piecework jobs in all departments.

Q. I beg your pardon?

A. We abolished piecework in all departments.

Q. So jobs which previously may have been on a piecework basis were then on an hourly basis?

A. Yes.

2031 Q. Is that correct?

A. Yes.

Q. There was no substantial change in the type of work; it was just a change in the method of compensating the workmen?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did they state whether they excluded salaried people and office people, and so forth?

A. Yes. They stated they excluded office people, salaried people and laboratory employees.

Q. At the time they presented their cards I believe you stated there were 226 members. How many persons did you have employed in the category of those eligible for membership?

A. I cannot give it to you exactly. I can give it to you approximately.

Q. Just approximately.

A. 256.

Q. 256?

A. Yes. It might be three more, or three less.

Q. It might fluctuate a little one way or the other?

A. One way or the other, yes.

Q. Was that more persons than you had employed in that category prior to the strike?

A. Yes, it is. We had more business.

2032 Q. You had more work, did you not?

A. Yes.

Q. And more people employed?

A. Yes.

Q. Do you recall the date upon which that meeting was held, at which they demonstrated their majority?

A. The one attended by Mr. Swiren?

Q. Yes.

A. It was prior to June 2nd, because I remember we had a meeting scheduled for June 3rd, and could not hold it.

Q. I think that was probably on the 27th of May.

A. I believe we were all up here in court then.

Mr. Swiren: I will be glad to get that date, and give it to you.

Mr. Walsh: I think probably it is the 27th of May.

Mr. Swiren: It was either the 26th or 27th, one of the two days.

The Witness: Then I will fix that date around the 26th, or 27th.

Q. (By Mr. Walsh) The 26th or 27th.

A. Yes.

Mr. Swiren: I think it was the 26th.

Mr. Walsh: The 26th.

Mr. Swiren: I talked to you on the telephone, and told you to serve it on my office, the complaint.

2933 Mr. Walsh: That is what brought it to my mind.

Mr. Reporter, will you read the last two or three questions and answers, so I can pursue my train of thought?

(The record was read.)

Q. (By Mr. Walsh) You had more people employed on the 27th of May on an hourly basis than you had employed on an hourly basis in February, did you not, Mr. Anselm?

A. I would not say we had. I cannot answer that question offhand.

Q. Your records reflect that, do they not?

A. We will be glad to furnish you that information.

Q. I would like to have you furnish me the number you had employed on February 17th that fall within the same category as the persons now employed on an hourly basis.

Mr. Swiren: Perhaps I can give that to you right now.

Mr. Walsh: Excuse me just a moment. Do you have that without the—

Mr. Swiren: Do you want that without the laboratory employees?

Mr. Walsh: Yes.

Mr. Swiren: My records show 229. Do you want that, Mr. Walsh?

Mr. Walsh: Yes, I do. 229, in February?

Mr. Swiren: February 17th.

Mr. Walsh: Thank you.

2034 Q. (By Mr. Walsh) Mr. Swiren tells me that you had employed on February 17th 229 persons on an hourly basis, excluding laboratory workers. Is that right?

A. I think that is about right. It has since been increased.

Q. I beg your pardon?

A. It has since been increased.

Q. I think you said there were 256,—

A. Plus or minus.

Q. —plus or minus two or three—

A. That is right.

Q. —on May 27th, when the committee from the Rare Metals came in to talk with you?

A. That is correct.

Q. Now, what were the subjects of discussion with the Rare Metals Committee?

A. How is that?

2035 Q. Now, what were the subjects of discussion with the Rare Metals Committee?

A. We never got any further than recognition.

Q. You just were about to sit down and thresh your problems out when you were interrupted by certain other matters; is that correct?

A. That is correct.

Q. So the meeting of the 27th of May wound up by their demonstrating that they had a majority of the members in the plant, and you were then, at some future time, going to enter into negotiations?

A. That is about all the business that was completed.

Q. Mr. Anselm, who is the person who could tell me whether or not this was printed on the mimeograph machine of the company?

A. I imagine Henry Berquist would know.

Q. Who?

A. Henry Berquist. If you want to ask him about that, he is here this afternoon.

Q. Is he over there now?

A. He was a moment ago.

Q. I will borrow him from you.

A. That is service, is it not?

Q. That is what I call first class service.

Mr. Swiren: We will produce our witnesses rapidly 2036 for you, Mr. Walsh.

Mr. Walsh: I think that is all of Mr. Anselm.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: This 229, Mr. Swiren, includes the Vascoloy Ramet Company, or exclude it?

Mr. Swiren: That is excluding Vascoloy Ramet.

Mr. Walsh: Let us have the record clear about that.

Mr. Swiren: There were 52 in the same category in Vascoloy Ramet. Do you want to stipulate on that?

Mr. Walsh: Yes. Let the record show that on February 17, there were 229 hourly paid workers employed by Fansteel Metallurgical Corporation, excluding laboratory workers, and on that date there were—

Mr. Swiren: 52.

Mr. Walsh (Continuing): —52 hourly paid workers employed by Vascoloy Ramet Corporation.

Mr. Swiren: That excludes foremen, clerical force and laboratory workers.

Mr. Walsh: As salaried people.

Mr. Swiren: I do not know whether they are all salaried or not. I think they are.

Mr. Walsh: All right.

Trial Examiner Dudley: You may proceed.

2037 Mr. Walsh: I will call Mr. Berkquist.

HENRY BERKQUIST, a witness called on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Walsh) State your name, please.
A. Henry Berkquist.
Q. Where do you live?
A. 531 North Butterick.
Q. Waukegan?
A. Waukegan.
Q. You are employed by Fansteel, are you not?
A. Yes.
Q. How long have you been so employed?
A. Since April, 1919.
Q. What is your job there?
A. I am what is called a traveling mechanic.
Q. Traveling mechanic?

A. Yes. I am in all the buildings. I work out of the tool room.

Q. You work out of the tool room?

A. Yes.

Q. You are peripatetic, I take it; that means you roam around from one building to another?

A. My work is in Building 2.

2038 Q. Did you take part in the strike that occurred at the plant?

A. No, sir.

Q. On February 17th?

A. No, sir.

Q. Were you ever a member of Lodge 66?

A. No, sir.

Q. When did you return to work after the trouble was over?

A. The following Monday, after it was over.

Q. That would be on the 1st of March, would it not?

A. I could not recall what date it was. It was the first Monday after the trouble.

Q. Well, let us say it would be the end of February or the first of March?

A. Yes.

Q. Did you receive pay for the time the buildings were tied up?

A. Yes.

Q. Did you return to the same job you had?

A. Yes.

Q. Did you receive any more pay after the strike than you had received before.

A. I got a raise, that I had coming before. That was five cents.

Q. That was some raise that had been agreed upon before the trouble broke out?

2039 A. Yes.

Q. When was that raise agreed upon?

A. I had known about it for a couple of months, perhaps; a month or two, at least. It was understood that I was to get it.

Q. It was understood you were to get it?

A. Yes.

Q. Then the trouble intervened, and it did not come through, is that right?

A. Yes.

Q. Was that dated back?
A. No, sir. That started when I got my raise.
Q. When you got back to work?
A. Yes, the same as all of the other raises.
Q. After the trouble was over, you took some part in helping organize Rare Metals, is that right?
A. To a certain extent, yes.
Q. What did your activities consist of?
A. Well, there was such a lot of talk all through the plant about forming a union, or an organization of some kind. I was one of them that was asked to get a committee of four or five together to go over and present our side to the office.
Q. Who asked you to do that?
A. Oh, there were several. There were Mr. Johnson, and I believe pretty nearly all of the committee.
2040 Q. That is, Ted Sylvin?
A. Yes.
Q. Mr. Weddell?
A. Yes.
Q. Who else was on that committee?
A. Mr. Johnson, Mr. Sylvin, Mr. White—
Q. "White", you say?
A. White.
Q. What White is that?
A. James White.
Q. Yes.
A. Mr. Chapman.
Q. Mr. Chapman.
A. Ed. Chapman.
Q. Do you remember what day you went over to see Mr. Anselm?
A. I could not recall the date, no. It would probably tell on the records down there. It was a day or two previous to the first voting.
Q. Previous to the first voting?
A. Yes.
Q. What did you talk to Mr. Anselm about?
A. We merely told him we were a committee selected by certain ones working there, and was about to form a union, or an organization. We didn't state any definite cause.
Q. You just wanted to talk about forming a local,
2041 is that right?
A. That is right.

Q. At that time had you agreed what you were going to call this new union?

A. No. That was agreed on later.

Q. It was agreed on later?

A. Yes.

Q. Did you ask Mr. Anselm that day if you could put up notices on the bulletin board?

A. We did.

Q. He told you it would be all right, is that right?

A. Yes.

Q. Notices were later put up, were they?

A. They were, yes.

Q. Who had charge of putting up the notices?

A. I think Mr. Sylvin and Mr. Johnson took care of that.

Q. I see. Did you take care of getting the notices for them?

A. I went up with another party on the committee, and we got permission from Mr. Anselm to see the girl up there.

Q. The mimeograph girl?

A. Yes. We didn't ask for any one in particular.

Q. You wanted to know if the girl who ran the mimeograph would run off the notices, is that right?

A. Yes.

2042 Q. Did she type out the stencil and put it on the machine?

A. I don't know.

Q. Did you wait to see?

A. No.

Q. Did you tell her what to write down?

A. We did. We had it right there, written on a paper.

Q. You had it written out?

A. Yes.

Q. You gave the paper to the girl?

A. Yes.

Q. And the girl ran them off? She ran off as many notices as you needed?

A. I believe she did, I believe we asked for 300.

Q. You asked for 300?

A. I believe that is right.

Q. She ran them off for you?

A. Yes.

Q. You later came back and picked them up yourself?

A. They were put in an envelope, and we picked them up, yes, sir.

Q. Then did you distribute those notices yourself?
A. No.
Q. Who distributed them?
A. I couldn't say.
Q. To whom did you give them?
2043 A. The notices were probably distributed either by Mr. Johnson or Mr. Sylvin.
Q. Either Mr. Johnson or Mr. Sylvin?
A. Mr. Weddell may have done it.
Q. Those notices called attention to the fact that you were going to have a meeting in Building 14, is that right?
A. Yes.
Q. That meeting was called for the 15th of April, I believe?
A. I believe it was.
Q. It was to be held at 3:30 in the afternoon?
A. Yes.
Q. 3:30 is the time at which the day shift quits work, is it not?
A. The majority of the day shift quits, and the night shift comes on.
Q. They just about catch everybody in the plant, is that right?
A. Yes.
Q. Were those notices posted on the boards?
A. I believe they were all posted, yes. There was one posted, I know.
Q. The meeting was called for the purpose of voting on the question of whether you would have an independent labor organization or not?
A. Correct.
2044 Q. Is that right?
A. Yes.
Q. Is this one of the ballots that was used there (handing document to witness)?
A. Yes.
Q. Where was that ballot made up, Mr. Berkquist?
A. It was made up on the mimeograph.
Q. At some time later did you go back?
A. No.
Q. I mean before the meeting.
A. No. We got it all done at one time.
Q. That was all done at one time?

A. Yes.

Q. So the ballots and the notices were all run off at the same time?

A. I believe the notices were typewritten. The ballots were mimeographed.

Q. You said there were 300 notices.

A. 300 ballots; the 300 was the ballots.

Q. I thought you said there were 300 notices.

A. No; there was only twelve notices, I believe.

Q. There were twelve notices?

A. Yes.

Q. They were typed?

A. Yes.

2045 Q. Then they were the 300 ballots which were mimeographed?

A. Yes.

Q. I see. I wondered what you did with 300 notices.

A. There were 300 ballots.

Q. Who had charge of the ballots?

A. I think there was a committee of six had charge of that.

Q. Do you remember who was on that committee?

A. Offhand, I couldn't say. We have it on the records down there who was on that committee, watching the ballots, and also the ones that counted.

Q. Now, the vote was taken on the afternoon of the 15th in Building 14, was it not?

A. Yes, sir.

Q. Do you remember the result of the vote?

A. Not correctly, no; but I believe it was approximately 80 per cent for.

Q. I believe Mr. Sylvin told me this morning that there were 183 who voted in favor of it.

A. There was a hundred and eighty some for.

Q. Yes. There were 14 against, and then there were these blanks.

A. There were 15 or 16 blanks, and 13 or 14 against. That is correct.

Q. What happened to the ballots?

A. The ballots were placed in a box at the meeting, 2046 and the box was sealed.

Q. Then who took charge of the ballots?

A. I believe Mr. Weddell and Mr. Johnson took the ballots over to the office and placed them in the vault.

Q. Do you know who they asked about placing them in the vault?

A. I don't know.

Q. You think Mr. Johnson and Mr. Weddell had charge of that?

A. I believe they did, yes, sir.

Q. After that meeting was held, did you hold further meetings for the purpose of nominating officers?

A. Yes. They held a meeting shortly after that, say within a week.

Q. Was that also held at Building 14?

A. Yes.

Q. Were there notices posted on the bulletin board about that meeting?

A. Yes.

Q. Who wrote up those notices?

A. Miss Whitelock, I think it was.

Q. Who?

A. Miss Whitelock wrote them notices.

Q. What does Miss Whitelock do?

A. She is a stenographer for Dr. Driggs.

Q. For who?

A. Dr. Driggs.

2047 Q. She is in the office of the company?

A. She is in the laboratory.

Q. She is a stenographer for Dr. Driggs in the laboratory?

A. Yes.

Q. Those notices, I take it, were also posted on the bulletin boards?

A. Yes.

Q. The meeting was held and nominations made at that meeting, is that right?

A. Correct.

Q. How were nominations made?

A. Nominations were made from the floor.

Q. How many people were nominated for the office of president?

A. I believe there was two.

Q. Two?

A. I think so.

Q. Do you remember who they were?

A. I remember the one that got it is Mr. Griffith.

Q. Mr. Griffith was elected?

A. Yes.

Q. You do not know who ran against him?
A. No.
Q. Do you remember how many people were nominated for vice president?
2048 A. Two, I believe.
Q. You do not know who the successful candidate there was, do you?
A. Yes; Ray Pearson.
Q. Ray Pearson?
A. I believe it was; I am not sure.
Q. Who was elected?
A. Mr. Spellman.
Q. Mr. Robert Spellman?
A. Right.
Q. How many people were nominated for treasurer?
A. I believe there were two for treasurer.
Q. Do you remember who they were?
A. Mr. Bristol.
Q. He was the successful candidate, was he not?
A. Yes.
Q. Do you remember who the other man was?
A. I don't recall offhand.
Q. Betty Valenta was elected; she was the successful candidate for secretary, was she not?
A. She was the only one, I believe.
Q. She was the only one nominated?
A. Yes.
Q. You had the ballots made up after that?
A. Yes.
2049 Q. Where were these ballots made up?
A. I don't know.
Q. Who had charge of that?
A. The committee had charge of that. That was Mr. Weddell, Mr. Johnson and Mr. Sylvin.
Q. You do not remember whether those ballots were printed or mimeographed, do you?
A. I don't remember. I believe they were mimeographed.
Q. You believe they were mimeographed?
A. I think so.
Q. Do you know whether they were mimeographed by the same girl who mimeographed these others?
A. I don't know.
Q. How was the election conducted?
A. It was conducted the same as an ordinary election

with ballots. Every one was given a ballot, and voted a secret ballot.

Q. Where were the ballot boxes placed?

A. In Building 3 and Building 5, I believe, was the only place, at the clock.

Q. At the clock in buildings 3 and 5?

A. Yes.

Q. Who had charge of the ballot box in Building 3, do you know?

A. The committee had charge of that. They ap-
2050 pointed one or two others, I think.

Q. To help with the voting?

A. Yes.

Q. Do you remember when the polls were opened?

A. They were opened at noon.

Q. How long did they remain open in the day, do you know?

A. One-half an hour.

Q. A half hour at noon?

A. Yes.

Q. Were they open later in the afternoon?

A. They were open again at 4 o'clock, I believe.

Q. 4 o'clock?

A. Either 3:30 or 4.

Q. That was so you could catch the night shift coming on and the boys going home, is that right?

A. Yes.

Q. Do you know who counted the ballots?

A. Well, they—

Q. Were you on the committee that counted the ballots?

A. Yes. I was one of them.

Q. You were one of the counters?

A. I believe there was six altogether.

Q. There were six all told?

A. Yes.

Q. Where did you take those ballots to count them?

2051 A. The inspection department, right alongside of the clock.

Q. You took them into the inspection department?

A. Yes.

Q. In Building 3?

A. Building 5.

Q. Building 5?

A. Yes.

Q. When did you count them, immediately after the polls closed?

A. Right after the polls closed.

Q. Do you know what became of the ballots after they were counted?

A. They were put in a box and sealed.

Q. What became of the box?

A. I don't know.

Q. Who had charge of the box?

A. The committee selected at that time still had charge of the box, Mr. Johnson, Mr. Weddell, and Mr. Sylvin.

Q. Did you ever hear what became of them?

A. I never inquired.

Q. So if Mr. Johnson says they were put in the safe over in the office, you would assume that would be correct, is that right?

A. I would assume that, yes.

Q. Were you on the committee that assisted in get-
2052 ting the charter?

A. I was not.

Q. You were on the original committee, were you not, that talked the thing up?

A. We went over to the office first, yes, sir.

Q. You went over to the office first?

A. Yes.

Q. Did you know that the persons who later became incorporators had been to see Mr. Hendee?

A. I didn't know while they were in there.

Q. I beg your pardon?

A. Not while they were in the office, no.

Mr. Walsh: I do not quite understand that. Read the answer, please, Mr. Reporter.

(The answer was read.)

The Witness: While the committee was in the office.

Q. (By Mr. Walsh.) Mr. Sylvin and Mr. Johnson were the temporary officers of the lodge, were they not?

A. And Mr. Weddell.

Q. Mr. Weddell?

A. Yes.

Q. They were just selected for the purpose of perfecting the organization, were they not?

A. Yes.

Q. How did the first committee get together to pick
2053 out those men to carry on the work?

A. They were just selected one noon or at random, after the first committee had been over to the office.

Q. I see. Did you attend meetings of the committee after you had been over to the office, when Mr. Johnson, Mr. Weddell and Mr. Sylvin were talking about incorporating, or whether they should incorporate?

A. That was understood, as far as I know, or we assumed it was agreed if they were to have a union, they were to go ahead and apply for the charter and organize.

Q. You do not recall who determined whether they should incorporate the lodge, or whether it should be an unincorporated association, do you?

A. No, I don't offhand.

Q. Now, what meetings did you have after the election of officers?

A. I believe they had two since that.

Q. Two since that?

A. I think so.

Q. One in May and one in June, is that not right?

A. Yes.

Q. Does the organization have by-laws?

A. Yes.

Q. Do you know who prepared the by-laws?

A. A committee of nine.

2054 Q. A committee of nine?

A. Yes.

Q. Do you know who was on that committee, or can you tell us?

A. Mr. Novack was chairman. There was Mr. Lindloff.

Q. All right.

A. There was Elizabeth McCann, Stanley Monroe, Lawrence Schardt—

Q. Who was that?

A. Lawrence Schardt.

Q. Schardt?

A. Yes.

Q. That is the same name as that of one of the foremen?

A. Yes.

Q. Go ahead.

A. Eria Hibbard, Ed Chapman, and myself.

Q. Did that committee have a meeting and discuss the by-laws that should be passed?

A. I believe we had four meetings.

Q. You had four meetings?

A. I think that is corect.

Q. You finally agreed as to what by-laws you should propose to the membership, is that right?

A. Yes.

Q. Were those by-laws later presented at a meeting
2055 to the membership?

A. They were.

Q. When was that meeting held?

A. That meeting was held in May.

Q. In May?

A. Early in May.

Q. Where was it held?

A. I believe the name of the place was Holy Family Church Hall.

Q. Holy Family Church Hall, is that right?

A. Yes.

Q. Who arranged for the use of the hall?

A. That I believe is up to the secretary to arrange for the hall.

Q. That was Betty Valenta's job, is that right?

A. Yes. She couldn't do it, so Mr. Bristol arranged and paid for the hall.

Q. Do you recall how much they charged you for the use of the hall?

A. Offhand, I couldn't say. I believe they charged ten dollars.

Q. Ten dollars?

A. Yes.

Q. At that meeting you presented the by-laws and they were adopted by the membership?

2056 A. Yes.

Q. Did the by-laws provide for the payment of dues?

A. They did.

Q. How much are the dues?

A. The dues are 50 cents a month now, with no assessments.

Q. No assessments?

A. No assessments.

Q. Whose duty is it to collect dues?

A. That is the treasurer's duty, to collect dues.

Q. Does he collect?

A. He does.

Q. Do the members pay?

A. They do.

Q. Very good. Now, you had a further meeting in June, or another meeting in June; where was that held?

A. That was held at the Auditorium in North Chicago, on Sheridan Road.

Q. What was transacted at that meeting?

A. I believe that was just a meeting to talk over other meetings and general business.

Q. Just general business of the organization, is that right?

A. Yes.

Q. Who is foreman over you?

A. Mr. Groll.

Q. Mr. Groll?

2057 A. A. Groll.

Q. Have you discussed the work of this lodge with him?

A. No, sir.

Q. Did he ever talk to you about it?

A. No.

Mr. Swiren: Keep your voice up, please.

Mr. Walsh: Speak a little louder so all of these gentlemen can hear you.

Q. (By Mr. Walsh.) Did you ever talk to Florin Schardt about it?

A. No, sir.

Q. Did you ever talk to Mr. Anselm about it other than the talks you had with him when you were on the committee?

A. None, other than that committee meeting.

Q. Did any foreman or any supervising officer ever talk to you about this?

A. Not at all.

Q. Do you know whether they talked to any of the other members of the committee?

A. To my knowledge, no, they have not.

Q. You have not talked to them about it?

A. No, sir.

Q. The only contact you had with them was from being on the committee?

A. From being on the committee.

2058 Q. Are you a member of the negotiating committee?

A. I am not.

Q. Were you on the committee that talked with Mr. Anselm on the 27th of May?

A. I was.

Q. About the only business that was transacted at that

meeting was establishing whether you represented a majority of the people, is ' at right?

A. That is correct.

Q. I believe Mr. Anselm says you had about 226 members, or something like that?

A. That is correct, yes, sir.

Q. Did you assist in the circulation of the petitions for charter members of this lodge?

A. I did not.

Q. Those were circulated by Mr. Weddell, Mr. Johnson and Mr. Sylvin, is that right?

A. I believe Mr. Sylvin circulated the largest amount.

Q. I beg your pardon?

2059 A. Mr. Sylvin—

Q. He was the most active?

A. Yes.

Q. He got the most members, is that right?

A. Yes. That is correct.

Q. Now, have you had anything else to do with the formation of this organization other than these things you have told us about?

A. Nothing, except I am on the agreement committee. We have not come to any of that yet. That is still in progress.

Q. That is the committee that meets with the management—

A. That is right.

Q. —to work out an agreement with them?

A. That is right.

Q. You have not yet had time to finish the bargaining with the management, is that right?

A. That is right.

Q. That has been interrupted by several things, has it not?

A. It has.

Q. Did Mr. Schardt attend the meeting that was held at the Holy Family Church?

Mr. Swerin: Let us identify him.

Mr. Walsh: All right.

Q. (By Mr. Walsh.) Did Mr Florin Schardt attend that meeting?

2060 A. Not that I know of, no, sir.

Q. Do you know whether he is a member of that congregation?

A. I don't know.

Q. Are you a member of it? Are you a member of that church?

A. No, sir.

Q. Did you say you did not know whether he attended, or did not attend?

A. He was not there.

Q. He was not there?

A. I did not see him. I came in there slightly late. He wasn't there while I was there.

Q. These petitions that were circulated, were circulated in and about the plant, I take it, by Mr. Sylvin, Mr. Johnson and Mr. Weddell, were they not?

A. Yes, they were.

Q. Were you ever a straw boss, Mr. Berkquist?

A. Sir?

Q. Were you ever a straw boss?

A. No, sir.

Q. Who is eligible for membership in your union?

A. Anyone with an hourly salary.

Q. No one else?

A. That is correct.

Q. No one having authority to hire, discharge or discipline people, is eligible, is that right?

2061 A. That is correct.

Q. That is correct?

A. Yes, sir.

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Berkquist, when did you first hear any talk of an independent union?

A. They were talking it all over the plant ever since we came back.

Q. What was that talk?

A. Well, it was just general talk.

Q. Tell us about it.

A. Well, it was just general talk about there that they should join an independent organization, or local union, or whatever they wanted to call it. It was generally termed as an organization.

It seemed to be general talk around quite a bit as to whether they should organize or not.

Q. There was some talk as to whether they should affiliate with the American Federation of Labor, was there not?
A. There was some, yes.
Q. Or whether you should have an independent union down there; is that correct?
A. Correct.
Q. There was considerable talk about the fact that
2062 they had to do something in the way of organizing a union, was there not?
A. That is the way I understood it all the time, yes.
Q. How many men would you say talked with you about matters connected with the organization in the period of a month following the time you went to work?
A. Offhand I couldn't say; probably eight or ten, or probably 15.
Q. As a matter of fact, it was a rather general subject of conversation around the plant, was it not?
A. Yes.
Q. You never talked with any of the foremen about it, did you?
A. No, sir.
Q. You never talked to Mr. Anselm of Mr. Aitchison, or Mr. Dow about it, did you?
A. Not until we had our first meeting with Mr. Anselm.
Q. Now, you never talked to Luther Henry about it, did you?
A. No.
Q. Did you ever hear anybody else talk with those men?
A. No, not to my knowledge.
Q. Did some of the employees ask you to assist in the organization of a union?
A. They did.
Q. Who were they?
2063 A. Generally, the committee that first went over, more so than anybody else.
Q. All the men that were on that committee came to you?
A. It was general talk; they asked me if I would go over with them, and I said that I would be agreeable to going over.
Q. You went?
A. Yes. In fact, I believe I was the first one to say I would be agreeable to going over.
Q. You were the first one that said you would be willing to go?
A. Yes.

Q. As a matter of fact, the other men had some hesitancy?
A. I think it was something like that, yes.
Q. Some of them expressed a fear that the company might resent it, is that right?
A. I would take it that way, yes. There was a certain amount of fear.
Q. The men were afraid the company might not look with favor upon the organization of an independent union, is that right?
A. Possibly they would, yes.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: I have a few questions.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Would you tell 2064 me again who was on this general committee that asked you to join the committee to go over to the office?
A. The first time?
Q. Yes, the very first time.
A. Mr. White—the entire committee was Mr. White, Mr. Sylvin, Mr. Chapman, Mr. Johnson and myself.
Q. Who asked you to join that group?
A. You mean, later?
Q. No, when you joined it?
A. We just agreed between us to go over. I agreed to go over. I was the first one that agreed to go over to the office to ask for this.
Q. Did Mr. White ask you to go over?
A. Mr. White—no. I talked to Mr. White, first, and he agreed to go over with me.
Q. You suggested to Mr. White to go over?
A. Yes.
Q. Then did you suggest it to Mr. Johnson?
A. Mr. Johnson talked to me first, and he said he would go over with me if I would go.
Q. Johnson suggested it to you, and you suggested it to White?
A. Yes.
Q. Who suggested it to Sylvin and Chapman?
A. I believe it was Mr. Sylvin—no. Mr. White

2065 asked Mr. Sylvin I believe, and he then asked Mr. Chapman.

Q. Now, as I understand it, after you held the meeting in Building 14 on April 15 to vote on whether or not you wanted an independent union, you had all of those ballots sent over to the vault?

A. That is correct.

Q. Who decided to send them over to the vault?

A. We didn't have any place to keep them where they would be safe, excepting the vault.

Q. Who decided they ought to be kept?

A. I believe the general committee that—the temporary committee that had that might have agreed to take it over.

Q. Did they say why they wanted to keep them?

A. Yes, so we would have a record; so they would have a record of their own of the ballots.

Q. Did they say why they wanted such a record?

A. Not particularly, no. They wanted to keep a ballot—they wanted to keep a record of how the ballots went on this particular issue.

Q. Did anybody say it was very important that you keep a record to show that most of the employees wanted an independent union?

A. Yes.

Q. Who said that?

2066 A. I don't recall who said it. It was talked of at the time, that there had to be a record.

Q. Did anybody outside of the committee tell you that?

A. No, sir, not that I know of.

Q. At the later meeting, after you were incorporated, when you held the vote for officers, you testified I believe that you were on the voting committee that counted the ballots; is that right?

A. Right—well, I was not on the committee for counting ballots. I was on a committee to see that the balloting was done.

Q. Do you know about what the total number of ballots was?

A. Well—

Q. Approximately, do you know about what the total number of ballots was for the presidency?

A. Well, they all ran about equal, but the person elected I think won by about 75 per cent.

Q. The president got about 75 per cent of the total?

A. Yes; the amount of ballots cast, I don't recall.
Q. About how many were there?
A. I would say possibly 175 to 200.
Q. 175?
A. 175—well, probably 150 to 200.
Q. 150 to 200?
A. Offhand I couldn't say.
2067 Q. I just want it approximately.
A. Yes.
Q. About 150 to 200 is the total?
A. I believe that is right.
Q. Did any of the foremen or superintendents or supervisors ever tell you that they could not talk with you about the union?
A. I have never heard them say anything at all about it. They have never discussed it with us, except the one time when we had the meeting with Mr. Anselm. Outside of that I have never discussed the union with any official of the company.
Q. At the meetings with Mr. Anselm of which I believe there were two, at least two, did he tell you you might not discuss the matter of the union with the foremen or any of the staff?
A. He did not.
Q. Did he say whether or not he cared about your talking about the union during working hours?
A. No, sir. He never said anything to that effect.
Q. Did he say whether or not he wanted you to talk about the union on company property?
A. He didn't say.
Q. He did not object to your discussing the union on company hours?
A. He didn't say whether they allowed it or not. In fact, he never mentioned it at all.
2068 Q. Did you ask him?
A. No.
Trial Examiner Dudley: That is all.
Q. (By Mr. Keele) While you were there, Mr. Anselm consulted a copy of the Wagner Act, did he not?
A. He had a pamphlet on the Wagner Act which he took out and read.
Q. What was that last?
A. I say, yes, he had a copy of the Wagner Act on his desk.
Q. Did he look at it?

A. Yes.

Q. Did he say anything about the fact—after he looked at it, did he not say to you that under the Wagner Act you had a right to organize if you wanted to?

A. Yes, sir. He said we had a right to do as we pleased in that respect.

Q. All right.

A. That was up to us entirely.

Q. Did he give you any copies of the Wagner Act?

A. Yes.

Q. He gave you each a copy of the Wagner Act?

A. He gave us some copies. Whether we all got one or not, I couldn't say offhand. I got one.

I believe there were four or five copies issued.

Q. Did you do any soliciting of members for the
2069 union, or do any union organization work during working hours?

A. Only at the start there, when we first started, yes.

Q. Before you went over to see Mr. Anselm?

A. Yes.

Q. After that time you did not do any on company time, did you?

A. No.

Q. You did not have any of those meetings on Fansteel property, did you? They were held over in the Vascoloy Ramet building, were they not?

A. Correct.

Mr. Walsh: I object. I understand that the property belongs to the company.

Mr. Swiren: We own the property, but it is under lease to Vascoloy Ramet.

Mr. Walsh: I will not be technical with you. Go ahead. Pardon the interruption.

Q. (By Mr. Keele) It is a building not used by Fansteel, is that correct?

A. I believe that is correct, yes. It is outide of the fence.

Mr. Keele: That is all.

Q. (By Trial Examiner Dudley) Did Mr. Anselm or anyone else tell you that you could use building 14 because it was outside of the fence?

2070 A. (No answer.)

Q. Did they ever say that that was different from buildings 3 or 5 or any other buildings because it was under the control of a different corporation?

A. No, but I believe it was generally understood down there that it is leased to Vascoloy Ramet.

Q. You did not discuss the point?

A. No, sir. We never brought it up.

Q. (By Mr. Walsh) Do you have any members in Ramet?

A. No, sir, none at all.

Trial Examiner Dudley: Now, Mr. Berkquist—

Mr. Walsh: You asked—

Trial Examiner Dudley: Go ahead.

Mr. Keele: After you, sir.

Trial Examiner Dudley: No. Go ahead.

Q. (By Mr. Keele) You asked yourself for building 14, did you not?

A. Well, we asked for a place to meet, and we suggested building 14 as being the best building, knowing that it was outside.

Q. And vacant?

A. Yes.

Q. All right. Furthermore, you tried to get a hall downtown, did you not?

A. Yes, we did.

2071 Q. And the people down here were afraid of violence, were they not, and said so?

A. I believe that is correct, yes.

Q. One of them wanted a bond put up, did he not?

A. I think that is correct. That was taken up by Mr. Johnson, I believe, and it was hard to get a building. Since then we have been able to get several.

Q. Since then you have been able to get several buildings?

A. Yes.

Q. And you have met in those buildings since then?

A. Yes.

Mr. Keele: That is all.

Q. (By Trial Examiner Dudley) You testified, did you not, that you were on the by-laws committee?

A. Yes.

Q. Now, you know in a general way what is in those by-laws, do you not?

A. In a general way, yes.

Q. Do the by-laws say anything about whether the union may have an outside person to represent the union?

A. None excepting an attorney; no outsider, excepting an attorney.

Q. The union may be represented by an attorney?

A. The union has an expert attorney, or an expert legal adviser. He is an expert legal adviser of the organiza-
2072 tion only.

Q. Do the by-laws say that you shall have no representative of the union who is not a member of the union?

A. Not a member of the union, and not an employee of the factory of the Fansteel Corporation.

Q. Except for an attorney?

A. Except for an attorney.

Q. Now, your charter says that you are Lodge No. 1.

A. Correct.

Q. Are there any other lodges of this organization?

A. Not of that nature that we could possibly find, not in the State of Illinois.

Q. Does the charter make any provision for joining with any outside union, national, state, regional, or international, of any kind?

A. Our by-laws take care of that.

Q. What do the by-laws say as to that?

A. We have an amendment clause in the by-laws that by the vote of a certain number of the members, the entire membership will be—the organization can be affiliated.

Q. I can be affiliated with any other national organization?

A. Any national organization, yes.

Q. Or international organization?

2073 A. That is correct. That is in the by-laws.

Q. The by-laws provide it must be a unanimous vote of the entire membership?

A. Not the unanimous vote; a certain amount, or more.

Q. Do you know how much that is?

A. 75 per cent.

Q. That is, the by-laws provide that on a vote of 75 per cent of the membership of the union—

A. Or more, yes, sir.

Q. —or more, the lodge may then become affiliated?

A. The by-laws can be amended so it can be taken—so they can go into another organization if they deem it necessary, yes.

Q. Do you mean that the by-laws provide that the lodge can become affiliated with an outside union only by first amending the by-laws?

A. The by-laws can be amended. There is an amendment clause in our by-laws that the by-laws can be amended by a vote of the organization.

Q. Perhaps I am not quite clear on that. Suppose you wanted to join the American Federation of Labor, we will say. Is it necessary that you first amend your by-laws to allow you to join it?

A. It is not necessary, no. That could just be taken to a vote.

2074 Q. These by-laws provide that by a vote of 75 per cent you could become affiliated?

A. Yes.

Q. Without changing the by-laws?

A. Yes.

Mr. Walsh: Would the Examiner like to ask for a copy of their by-laws?

Trial Examiner Dudley: I thought perhaps one side or the other would be bringing them in.

Mr. Walsh: Would you give us a copy of your by-laws?

The Witness: I haven't got a copy. We have copies of our by-laws.

Mr. Walsh: Do you have copies typed up or printed?

The Witness: Our attorney has one copy, and we have, I believe, four or five. You can always get more.

Mr. Walsh: Could you furnish us with a copy of them for the record?

The Witness: I think it is possible, yes.

Mr. Walsh: We would like to have it if you can give it to us.

The Witnesss: We would have to get that from the executive committee.

Mr. Walsh: The executive committee?

The Witness: Yes.

Mr. Walsh: You will make inquiry during the course
2075 of the trial and ask them to furnish us with a copy of the by-laws, will you not?

The Witness: Yes.

Trial Examiner Dudley: I have one or two more questions.

Q. (By Trial Examiner Dudley) Who was it during the deliberations of the committee regarding the passing of by-laws, who suggested the provision against having any outside representative of the union except for an attorney?

A. The biggest part of it was general talk down there. They didn't want any outside interference.

Q. Whom do you refer to when you say "they"?

A. That was just general talk at the time. After this trouble, there was several of them.

Q. Do you recall anybody specifically making that statement?

A. Offhand I couldn't state specifically, no. It was more or less talk to that effect.

Q. Do you know who it was that brought it up first, at your committee meetings?

A. I don't think it was brought up under those circumstances at the committee meeting.

Q. Was it your attorney that suggested the provision against outside representation?

A. No, he didn't suggest it.

Q. Was it somebody on the committee?

A. In fact, the attorney had nothing to do with draw-
2076 ing up the by-laws. He just furnished us with an outlay of what we should draw up, but he furnished that after we had drawn up the by-laws We drew up the by-laws entirely ourselves.

Q. Did you suggest the provision against outside representatives?

A. We suggested it would have to come to a vote of the majority, and we figured 75 per cent.

Q. Did you suggest that yourself?

A. Not personally, no.

Q. Do you know who it was of the committee suggested that?

A. No. I couldn't say who it was. It was just general talk of the by-laws committee, not only in that respect, but in some other things in the by-laws there, they cannot be changed or revised without 75 per cent or more of the organization.

Q. During the general talk of the committee which you have mentioned, what were the reasons given for not having outside representatives.

A. The biggest reason they mentioned was, as far as I understood it, to keep from any further trouble within the plant, as far as I know.

Q. What else did they say? What did they mean by that?

A. They didn't want any outside interference of any kind, anybody that didn't understand the working of the plant, I imagine.

2077 Q. With whom did they say they might have trouble?

A. No one, specially.

Q. Did they say they might have trouble with outside unions?

A. Not particularly, no. They mentioned no outside union, no outside organization of any kind.

Q. What kind of trouble was it they were fearing?

A. I imagine they didn't want any outsiders to tell them what to do, the way I understood it.

Q. Did they say—

A. They wanted self-control.

Q. —that outsiders would not understand what was going on in the plant?

A. That is the most general rule, yes.

Q. Did they say outsiders would make them do things they would not want to do?

A. Possibly, yes.

Q. Did they say outsiders might make them strike when they did not want to strike?

A. Well, there was some of that.

Q. What else did they say?

A. That is about all. It was just the general opinion that they wanted control of everything within their own plant.

Q. Did they say the company did not like to deal with outside union men?

A. They never mentioned that.

2078 Q. Did they say that outsiders had caused the previous strike and gotten you all in trouble?

A. No, I don't believe that was brought up; not to my knowledge, it wasn't.

Q. Did they say that during the fall of 1936 the company had refused to recognize an outside union?

A. No. That was not brought up at the by-laws committee.

Q. Did they discuss any of the leaflets distributed by the company during September of 1936 regarding the recognition of unions?

A. Not during the meetings of the by-laws committee.

Q. Did you discuss the company's labor policy at all?

A. We discussed our by-laws only, and why they wanted the by-laws the way they were. Nothing outside was discussed at all, of those by-laws.

Trial Examiner Dudley: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Berkquist, at any of the meetings that you had with the committee or the membership, was the company's general labor policy discussed?

A. You mean, at the meeting? No, not that I know of.

Q. Did they ever talk about the employees representation plan that the company had suggested last fall?

A. That was never brought up at a committee meeting of any kind.

2079 Q. Was it brought up at any time between yourselves, in meetings—

A. No.

Q. —or when you were talking together?

A. No, not since this new organization was formed.

Q. Was it discussed before it was formed?

A. Yes. It had been discussed some before that.

Q. That is probably what prompted you to organize this independent organization, is it not?

A. Personally, not me, no.

Q. Did it have any influence on the other fellows, do you know?

A. I couldn't say.

Q. Did you ever discuss it in the organization period of the lodge?

A. I didn't bring it up myself.

Q. Did anybody else bring it up?

A. Not that I heard of. I never heard it brought up.

Q. Well, you were working there last fall when the company sent out that employees representation plan, were you not?

A. Yes.

Q. I suppose that was talked about in the shop, was it not?

A. At that time, yes. I never heard it mentioned since.

Q. That was along in September sometime?

A. It was last year sometime.

2080 Q. You think it died down then?

A. It did, as far as I know. It was never brought up.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: I would like to offer in evidence as BOARD'S EXHIBIT NO. 33 the ballot that has been identified here as having been used at the meeting on April 15th, 1937 in building 14.

The pencil writing on it is not included in the exhibit.

Mr. Swiren: Do you want to offer just the mimeographed portion?

Mr. Walsh: Just the mimeographed portion.

Mr. Swiren: The pencil writing on the front and back is to be excluded?

Mr. Walsh: Yes.

Mr. Swiren: I think you ought to remove the pencil writing, if you can.

Mr. Walsh: All right.

Trial Examiner Dudley: It may be received.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 33.)

Mr. Walsh: At this time I would like to offer for the record a copy of an additional order that was entered 2081 in the case of the Fansteel Metallurgical Corporation *vs.* National Labor Relations Board.

I believe this has been introduced in evidence. We did not have the actual order, before.

Trial Examiner Dudley: I think it is Exhibit 8. It was not introduced. We reserved a number for it.

Mr. Walsh: Yes. This will be Exhibit No. 8.

Mr. Swiren: I do not know what materiality it has to the issues of this case. That is a copy of an order we furnished Mr. Walsh at his request. I cannot see that it has any materiality to our issues.

Trial Examiner Dudley: Do you object?

Mr. Swiren: Yes.

Trial Examiner Dudley: Objection overruled. It may be admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 8.)

Trial Examiner Dudley: At this time we will take a short recess.

(A short recess was taken.)

Trial Examiner Dudley: I will call the hearing to order. You may proceed.

Mr. Walsh: I will recall Arvo Romppaine.

ARVO ROMPPAINE, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

2082 *Direct Examination.*

Q. (By Mr. Walsh.) Arvo Romppaine is your name?
A. Yes.
Q. You have testified here before, have you not?
A. Yes.
Q. Arvo, were you on the picket line on the 15th of April, 1937 at about three-thirty in the afternoon?
A. I was.
Q. I will ask you whether or not you saw a number of people going from the plant down to building 14?
A. I did.
Q. Was there anybody directing them to go down there?
A. Yes. The watchman at the gate was pointing east to go along the railroad tracks there. I walked around to see where they were going, on the sidewalk. I saw them going in building 14, in the south door near the elevator shaft. That is where they were going in.
Q. That was the watchman regularly stationed there on duty?
A. I don't know. I couldn't identify him. I was out on the street there. I didn't notice his face.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) How far away were you from the gate, Arvo?
2083 A. Well, I was on the street there.
Q. You were on the street?
A. Yes.
Q. That is 400 feet away from the gate, is it?
A. Well, I suppose it is pretty close to it. I couldn't say.
Q. Yes. You did not hear what anybody said to this man that pointed, did you?
A. No. I wasn't close enough to hear any conversation.
Q. You do not know what they asked him or what he said to them?
A. No.
Q. You do not know who that man is?

A. No.
Q. You cannot identify him for us today?
A. No. I couldn't, for sure.
Q. How long did you stand there?
A. Oh, I stayed there a couple of minutes, and I saw the crowd going over along the railroad tracks, so I walked around on the sidewalk towards building 14, right next to it.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Walsh: Alvar Romppaine.

2084 ALVAR ROMPPAINE, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You are Alvar Romppaine?
A. Yes.
Q. You have previously testified?
A. Yes.
Q. You heard Arvo's testimony a moment ago, did you not?
A. Yes.
Q. If I were to ask you the same questions would you have the same answers?
A. No.
Q. Tell us about it then.
A. I did not actually see them go in the building, because I sat in the car while he and a fellow named Paul Mehovick walked around. They were on the street there, on the road next to building 14.
Q. I see.
A. He came back and told me—
Mr. Swiren: Just a moment.
Mr. Walsh: Do not tell us what he told you.
Q. (By Mr. Walsh.) Tell us what you saw. Did you see the watchman sending them down that way?
A. Well, some of them walked right straight through,
2085 and then others kind of hesitated, and the watchman pointed towards the railroad tracks.
Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) You were sitting in the car in the street?

A. Yes.

2086 Q. That is even further away from the gate than the sidewalk, is it?

A. Yes.

Q. You did not hear what anybody said to this man at the gate or what he said to them, did you?

A. No.

Q. Do you know whether he is a watchman or not? Do you know who he is? Do you know the man?

A. No, I couldn't say.

Q. Was he working there when you had been working there?

A. There was a number of men at the gate. There was a uniformed deputy—I guess there was three, and this man.

Q. You picked this man out and you knew he was the watchman, did you?

A. Well, I knew the man was opening the gate.

Q. He was opening the gate?

A. Yes.

Q. You did not know whether anybody came up to that man and said "Where is Building 14"?

A. No, I couldn't say that.

Q. Or, "How do I get to Building 14?"

A. No.

Q. Or "Where is the meeting?"

A. No.

Q. You did not hear anything like that?

2087 A. No.

Q. It may have been said?

A. It might have.

Q. You do not know what he said to them?

A. No.

Q. You just saw him point?

A. Yes.

Q. You saw some people following his direction?

A. Yes.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: Frank Furlan.

FRANK FURLAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Mr. Collins: What is your name?

The Witness: Frank Furlan.

Mr. Collins. Were you served with a subpoena to appear here before the Examiner?

The Witness: Yes, I just got it this morning.

Mr. Collins: I would like to claim the privilege of the witness under Section 11, Paragraph 3 of the National Labor Relations Act.

2088 Trial Examiner Dudley: The privilege is granted.

Q. (By Mr. Walsh.) What is your address, Mr. Furlan?

A. 2002 Grove Avenue, North Chicago.

Mr. Walsh: I might state, if the Examiner please, that this witness is in group 2.

Q. (By Mr. Walsh.) What did you say your address was again?

A. 2002 Grove Avenue, North Chicago.

Q. How long were you employed by Fansteel?

A. About 6 months.

Q. What was your job?

A. Cleaning up steel.

Q. In what department were you?

A. In the cleaning department.

Q. Did the plant operate between the 17th of February and the 26th of February?

A. I believe they were on a strike then.

Q. There was a strike then?

A. Yes, I believe so.

Q. When did you join Lodge 66?

A. About the 1st of December.

Q. 1936?

A. Yes.

Q. Now, at the time this strike broke out on February 17, were you working in the plant at the time?

A. No, I wasn't.

2089 Q. Were you then on the night shift?

A. No. It was my day off.

Q. You had a day off that day?

A. Yes.
Q. When did you report to the plant after the strike broke out?
A. Well, payday comes right around then—
Mr. Swiren: Speak up louder, please.
Mr. Walsh: Speak a little louder, Mr. Furlan.
The Witness: Payday comes right around after they were gassed out. I went to get paid, and they didn't say anything about going back to work.
Q. (By Mr. Walsh.) Did they take up your pass at that time?
A. Yes.
Q. Did they ask you to fill out a new application?
A. No.
Q. Did they offer you your old job back?
A. No, they didn't.
Q. During the progress of the strike while the men were in the buildings, did you take an active part in the strike activities?
A. Outside of the fence, yes.
Q. Outside of the fence?
A. Yes.
Q. What did you do?
2090 A. I don't know what you mean, what did I do.
Q. Did you help put any food, clothing, bedding or oil stoves, kerosene, flash lights or flash light cells in?
A. Yes, I did.
Q. What did you put in the buildings?
A. Milk.
Q. Milk?
A. Yes.
Q. What was your hourly rate of pay at Fansteel?
A. 49 cents an hour.
Q. You worked 40 hours a week?
A. No, I didn't.
Q. How many hours a week did you work?
A. I would work 40 hours one week and the next week I would work 32 hours. It was not steady work.
Q. Did you have any other employment but your work at Fansteel?
A. No.
Q. Were you working any place else?
A. No.
Q. What was your average weekly pay? About how much did you make a week?

A. Well, I don't know. We got paid—
Q. Twice a month, did you not?
A. Yes.
2091 Q. How much did your checks amount to?
A. I believe the highest one I got was $39.
Q. What was the lowest one you got?
A. About $27 I guess.
A. So it varied between $20 and $39 for the two week period, is that right?
A. Yes.
Q. How much money have you earned since February 26th?
A. About $35.
Q. What did you work at to earn it?
A. Caddying.
Q. When you were employed at Fansteel, did you do any work on the outside?
A. No.
Q. You did not?
A. No.
Q. You were not in the building at any time during the time the men were in there, were you, between the 17th of February and the 26th of February?
A. No, I was not.
Q. Were you cited in the contempt proceedings? Were you one of the respondents in the contempt trial?
A. (No answer.)
Q. Were you in this trial they had here last week when the other fellows were tried?
2092 A. No.
Q. Do you know whether you were one of the defendants in the injunction case?
A. I don't.
Q. You don't know whether you were or not?
A. No.
Q. Have you made any application for re-employment?
A. No, I have not.
Q. Would you return to work at Fansteel if the company recognized the union and took the other men back to work?
A. Yes, I would.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) What did you say you did? You took down some milk; you helped to put some milk in the buildings, is that right?

A. Yes.

Q. That was during the time the men were in the buildings?

A. I don't know if it was milk or coffee. It was in a big milk can.

Q. Where did you get that?

A. Off the top of a truck.

Q. You helped attach a rope to the can when it was hoisted over the fense into the plant, did you not?

A. Yes.

2093 Q. Did you ever take anything down there yourself?

A. No, I didn't.

Q. Did you ever assist anybody in taking anything down?

A. No.

Q. You were down there how often during that period?

A. Just about every night.

Q. About every night.

A. Yes.

Q. That was the only time that you assisted in putting anything over the fence?

A. Yes.

Q. When was that with reference to the time the strike started?

A. I can't remember what day it was.

Q. Well, it was in the middle part of it, was it not? It was not the first day or two, was it?

A. About three or four days I believe.

Q. At that time there was an injunction in effect, was there not? The sheriff had made one attempt to get the men out at that time, had he not?

A. I believe so.

Q. There was an injunction ordering those men to evacuate those buildings, was there not?

Answer yes or no.

A. I believe there was.

2094 Q. Yes. You knew about that, did you not?

A. Yes.

Q. You knew about the sheriff's efforts to get the men out, and you knew about the court order, did you not?

A. I believe so.

Q. The object of your helping to get that milk in, or coffee, whatever it may be, was to help those men stay in there, was it not?

A. Yes.

Q. You never applied for employment there after the men were evicted on the 26th, did you?

A. No, I didn't.

Q. You did not go there to ask about work, did you?

A. No.

Q. You just went down there and got your check?

A. Yes.

Q. You did not ask them if they would take you back?

A. No.

Q. You would not have gone back if they had offered to take you back, unless they took all the rest of the men back, is that right?

A. Yes.

Q. It did not matter why those men were discharged or for what reason; you would not have gone back unless they took them all back, is that right?

2095 A. Yes, sir.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: At this time, Mr. Examiner, I have concluded the introduction of evidence with the exception of two or three of the men who are not available for examination, and as to whom we will not be able to stipulate.

Mr. Swiren: Pardon me, before you rest your case, Mr. Walsh.

Mr. Walsh: Yes.

Mr. Swiren: I think I ought to say to the examiner and to you that we will undoubtedly at the opening of our case offer an amendment to paragraph 10 of our answer to make it conform to the proof. At the time the answer was drawn up, we were engaged in trial, and I did not have all the facts at my disposal. I did the best I could with what I knew.

The facts have come out on the witness stand, and some of them we did not have available at that time. I just wanted you to know that.

Mr. Walsh: I also will ask to amend to conform to the proof, so far as it relates to these various situations that we

learned on the trial, for the same reason. I did not know the facts at the time the complaint was drawn. I will
2096 ask to amend the complaint to conform to the proof.

Mr. Swiren: I just did not want you to rest without knowing that we planned to do that.

Mr. Walsh: I think we can work all of those things out. I have no desire to take any advantage of you on that.

Trial Examiner Dudley: Are those people whom you have learned were offered jobs, that you did not know anything about at the time?

Mr. Swiren: Yes. That was true, for instance, of Taylor, being a casual or temporary employee, from time to time at the hearing that developed. I knew there was such a man, but I did not know who he was.

I knew some of the women had been told to come back, and some of the men had been told, but whether everybody had been told that I did not know.

Mr. Walsh: Mr. Reporter, will you mark this Board's exhibit No. 34 for identification?

(The document referred to was marked Board's exhibit No. 34 for identification.)

Mr. Walsh: I offer in evidence what has been marked for identification Board's exhibit No. 34. It is a copy of the Waukegan News Sun. I think we will offer just the front page.

Mr. Swiren: Why do you not just cut the article out that you want?

Mr. Walsh: I will take an article from the issue of
2097 Wednesday, March 10th, 1937, of the Waukegan News Sun, and offer it in evidence.

Trial Examiner Dudley: Is there any objection?

Mr. Swiren: Just a moment. We have no objection.

Trial Examiner Dudley: It may be admitted.

(The clipping referred to was received in evidence and marked BOARD'S EXHIBIT NO. 34.)

Mr. Swiren: Is that all you have?

Mr. Walsh: Except for the by-laws ofthe Rare Metals Workers' Union. It will come in sometime later, I suppose. There were two or three things, copies of which you were going to give me.

Mr. Swiren: I gave you everything except the wage range in the various departments, which you asked for. I have the compilation, but I have not quite finished the range.

Mr. Walsh: I see.

Trial Examiner Dudley: I think we are still short one of the exhibits, are we not?

Mr. Walsh: Here is a photostatic copy of that chart we referred to.

Trial Examiner Dudley: Let the record show that a photostatic copy is substituted for exhibit No. 32, and will be marked Board's exhibit No. 32.

(The document previously marked Board's exhibit No. 32 was thereupon withdrawn, a photostatic copy substi-
2098 tuted therefor, and marked Board's exhibit No. 32.)

Mr. Keele: There is one other point to be brought up. We reserved the right of cross-examination as to a number of men, and I think that should properly go in at the conclusion of the Government's case.

Trial Examiner Dudley: You have reserved it, so you can put it in on your direct.

Mr. Keele: I do not care just how it goes in. I think it should go in before our defense starts. It will probably follow right along.

Mr. Walsh: Suppose I reserve resting my case until you have concluded your cross-examination?

Mr. Keele: The difficulty of that is it will go into the middle of our case, and we want to keep it orderly, if we possibly can.

Trial Examiner Dudley: I think if you just proceed in the regular way, it will be all right.

Mr. Keele: We can do that.

Trial Examiner Dudley: I do not think it makes any difference.

Mr. Keele: I just thought I would call your attention to that before you rested your case.

Mr. Walsh: I think, if the examiner please, the Government will rest its case at this time.

2099 Trial Examiner Dudley: Subject to those several exceptions, I assume.

Mr. Walsh: Subject to the several exceptions mentioned.

Mr. Keele: We have some motions to make.

Mr. Swiren: I suggest that those be held over until we meet again. I suggest that we adjourn over the weekend. I think it is preferable to present those motions at the opening of Monday's session, rather than try to do it now.

Trial Examiner Dudley: Very well. We will adjourn until next Monday morning at 9:30.

Mr. Swiren: Just a moment. I want to check up on one thing here.

Trial Examiner Dudley: All right.

Mr. Swiren: If the examiner please, before we adjourn, in accordance with the order of the Board, we want to renew the application for subpoenaes and subpoenaes due to tecum filed with the Board.

We may have to ask for additional ones by Monday, but the order indicates that it may be renewed upon the completion of the complainant's affirmative case.

If the application is made, there will be several days in which to get subpoenaes issued to us for service, so we can expedite the hearing.

Trial Examiner Dudley: You think you may want some additional ones?

2100 Mr. Swiren: We may want some additional ones. We want those.

Trial Examiner Dudley: You want to renew this one now?

Mr. Swiren: I beg your pardon?

Trial Examiner Dudley: You want to renew this one now?

Mr. Swiren: Yes.

I might say, with reference to the men in our original group, most of them are being produced by Mr. Walsh. As to those, of course, there is no problem.

With respect to the matter of records, only a fraction of those have been produced so far, and all of them ought to be produced.

Trial Examiner Dudley: Are you not supposed to send your applications for subpoenaes in to Washington?

Mr. Walsh: Why do you not do this—

Mr. Swiren: The rules provide for making application to the trial examiner. The application has already been filed. The order suggests the rate of renewal, which we are now exercising.

Trial Examiner Dudley: I do not think I have a right to issue them.

Mr. Swiren: I do not think you have a right to issue them, but the application must be made.

Trial Examiner Dudley: It begins with section 20—

Mr. Swiren: It is section 21, I think, which provides:

2101 "Applications for the issuance of such subpoenaes may be filed by any party to the proceedings with the regional director or during the hearing with the trial examiner."

Trial Examiner Dudley: May I ask for the original application?

Mr. Swiren: Yes. Here it is.

Trial Examiner Dudley: Mr. Swiren, for which ones of these are you now asking?

Mr. Swiren: All except subpoenaes for the men Mr. Walsh said he would produce, namely, those who testified for him, excluding only, I think, two, for whom he asked excuse.

Trial Examiner Dudley: Do you know which ones those are? Why do you not work out a stipulation on this?

Mr. Swiren: I do not know why you ask me that question. I offered to stipulate at the beginning of the hearing, and Mr. Walsh said he was not quite sure he could.

Trial Examiner Dudley: Let the record show you made your motion, and I will reserve ruling on it until Monday.

Mr. Swiren: Very well.

Trial Examiner Dudley: We will adjourn at this time until Monday morning at 9:30, at which time we will probably assemble in the Probate Court room.

(Thereupon, at 4 o'clock p. m., Friday, June 18, 1937, an adjournment was taken until Monday, June 21, 1937, at 9:30 o'clock a. m.)

2105 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Circuit Court Room, County Building,
Waukegan, Illinois,
Monday, June 21, 1937.

The above-entitled matter came on for further hearing, at 9:30 o'clock A. M., pursuant to adjournment.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North LaSalle Street, Chicago, Illinois, by

Max Swiren, and
Harold M. Keele, and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

2106 PROCEEDINGS

Trial Examiner Dudley: Mr. Reporter, let the record show that this hearing is now recessed, to reconvene as soon as possible in Room No. 4 of the United States Post Office.

(The hearing was thereupon transferred to Room 4, United States Post Office, Waukegan, Illinois.)

Trial Examiner Dudley: The hearing will reconvene. You may proceed.

Mr. Walsh: If the Examiner please, may the record show that we met at the Court House, and recessed to the Post Office Building.

Trial Examiner Dudley: The record will so show.

Mr. Walsh: The Board moves to reopen its case. Does the Trial Examiner grant my motion to reopen?

Trial Examiner Dudley: Yes.
Mr. Walsh: Miss Joan Bissonnette.

JOAN BISSONNETTE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Joan Bissonnette?
The Witness: Yes.
Mr. Collins: Will you spell your last name for the reporter, please.
The Witness: B-i-s-s-o-n-n-e-t-t-e.
Mr. Collins: Were you served with a subpoena, to
2107 appear here before the Trial Examiner, a few moments ago?
The Witness: Yes.
Mr. Collins: If the Examiner please, I would like to claim the privilege of the witness under Section 11, paragraph 3 of the National Labor Relations Act.
Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

Q. (By Mr. Walsh) What is your address?
A. 1719 Sheridan Road.
Q. How long were you employed by Fansteel?
A. About nine months.
Q. That was nine months prior to February 17th, is that right?
A. Yes, sir.
Q. What was your job?
A. Inspecting contact points.
Q. When did you join the union?
A. In November.
Q. 1936?
A. Yes.
Q. What was your rate of pay?
A. 40 cents per hour.
Q. How much did that amount to per week?
A. 16.
2108 Q. $16.
A. Yes, sir.
Q. How much have you earned since February the 26th, 1937?
A. Oh, I don't know exactly. Around $50.

Q. Around $50?
A. Something like that.
Q. And what did you do, to earn that money?
A. Demonstrator.
Q. When you worked at Fansteel, did you normally do any work on the outside for pay?
A. How do you mean?
Q. Well, I mean, did you have any other job—
A. Oh, no.
Q. Other than your job at Fansteel?
A. No.
Q. Did the plant operate between February the 17th and February the 26th, 1937?
A. I don't know.
Q. Well, were you working at the time the trouble broke out down there?
A. You mean, before it broke out?
Q. Yes.
A. Yes, sir.
Q. Were you working on the day the trouble broke out?
A. I was working that day, yes, sir.
2109 Q. Did somebody tell you to go home?
A. Yes.
Q. Who told you?
A. Well, I don't know his name.
Q. Was it any of the foremen, or bosses?
A. Yes, sir.
Q. It was one of the bosses?
A. Yes.
Q. Was he the foreman of your department?
A. Well, really, there was so much going on there that I don't know just exactly who it was, but I think somebody come in and said that there was going to be a strike, and then our forelady told us we better go.
Q. Who was that; Mary Atkinson?
A. Yes, sir.
Q. Now, when did you get your last pay from the company?
A. Well now, let me see. I think that the last pay was March 5th—I believe.
Q. March 5th?
A. Yes.
Q. And was the plant in operation then?
A. Yes.

Q. Were they working then?
A. Yes, sir.
Q. Did the company take up your pass at that time?
2110 A. No, sir.
Q. Did they offer to take you back to work?
A. No.
Q. Did anybody say anything about taking you back when you got your pay?
A. No, sir.
Q. Did they tell you that they would call you whenever they would need you—
A. No.
Q. —or anything like that?
A. No, sir.
Q. Did you make any application to go back to work?
A. Yes, sir.
Q. With whom did you make that application?
A. Well, I called up Mary, the forelady.
Q. Mary, the forelady.
A. Yes.
Q. That would be Mary Atkinson?
A. Yes.
Q. Yes?
A. And then I put in an application to the office.
Q. What did Mary Atkinson tell you, when you talked with her?
A. Well, she said I couldn't and I asked her why; I asked her if my work was all right, and she said; and then
2111 I asked her what the reason was, and she said—let me see now—something about my attitude, or something like that.
Q. Your attitude?
A. Yes, sir.
Q. Well, did she say what your attitude had been?
A. No.
Q. Or anything further about it?
A. No, sir.
Q. Did she say anything about the fact that you were a member of the union?
A. No.
Q. Or anything like that?
A. No, sir.
Q. And you never have been called to work—

A. No.
Q. —or anything like that, since, have you?
A. No, sir.
Q. You left the plant immediately, after they told you to go at that time, did you?
A. Yes, sir.
Q. Did Mary Atkinson know that you were a member of the union, do you know?
A. Well now, I really don't know if she did. I imagine she did, though.
Mr. Walsh: You may—
2112 Mr. Swiren: I suggest that the latter part of the answer go out, if the Examiner please.
Trial Examiner Dudley: What was the answer?
(The answer was read.)
Mr. Walsh: Oh, leave it in.
Mr. Swiren: I may have a contrary imagination. I suppose that ought to go in, too.
Trial Examiner Dudley: It may stand.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Block.) I did not get your full name?
A. Pardon me?
Q. I did not get your name. Will you repeat it, please. I did not hear it.
A. Joan Bissonnette.
Q. Give it to me once more, please. There is a great deal of noise back here.
A. Joan Bissonnette.
Mr. Swiren: Joan Bissonnette.
Q. (By Mr. Block.) How long did you work at Fansteel, prior to February 17th, 1937?
A. About nine months.
Q. What were you doing there?
A. Inspecting contact points.
Q. Where did you work before that?
2113 A. Before that?
A. Yes.
A. I didn't work before that.
Q. This was your first job, was it?
A. Yes, sir.

Q. How?
A. Pardon me?
Q. Was that your first job?
A. Yes, sir, in the factory.
Q. Had you had any experience before you went to work for Fansteel—
A. No.
Q. (Continuing)—in the line of work which you were doing up to February 17th?
A. Not in that line, no.
Q. Now, on that day I believe you said that somebody told you to leave the building; is that right?
A. Yes, sir.
Q. What building were you in?
A. Building 3.
Q. 3.
A. In the Contact Department.
Q. In order to have it clear on the record here, Miss Bissonnette, your boss, or any representative of the management, did not tell you to go home and quit work, but it
2114 was somebody who was involved in the strike, and somebody connected with the union, was it not?
A. Yes, sir; it was those who came in.
Q. I did not hear.
A. Somebody came in, and told us to quit working.
Q. Yes.
A. And we did.
Q. Yes.
A. And then we turned around and looked at Mary Atkinson, our forelady, and she says, "Yes you might as well quit and go"
Q. I know about that, but so that the record will be straight, as I understand it, it was not Mr. Anselm or Mr. Henry, was it?
A. No.
Q. Or Mr. Aitchison?
A. No.
Q. Or anyone connected with the company?
A. No.
Q. It was some employees—
A. Yes.
Q. —who came in there?
A. Yes, sir.

Q. And mentioned something about a strike, did you say?
A. Yes.
Q. And told you to leave the building.
2115 A. Yes, sir.
Q. And that is why you left?
A. Yes, sir.
Q. That is right, is it?
A. Yes, sir, that is right.
Q. When did you apply for employment again at the Fansteel Company?
A. Well, I don't know just the exact date.
Q. Well, approximately?
A. Oh, let me see. It was before—well, they had something in the paper about it.
Q. There was something in the Waukegan paper about it?
A. Yes.
Q. When was it, with reference to that?
A. Well, it was before the—before the time expired. It was supposed to be, that you should go back before a certain date, you know.
Q. Yes.
A. And I went up before that time.
Q. How long before?
A. Oh, I really couldn't say exactly. I don't recall that now.
Q. But it was after you read the article in the Waukegan paper, was it?
A. Yes, sir, it was after I had read the article in the
2116 paper.
Q. You did read it?
A. Yes, sir.
Q. And then sometime after that, you do not remember exactly when—
A. Before the date expired.
Q. Before the date fixed in the article expired—
A. Yes, sir.
Q. —but after you read it.
A. Yes, sir.
Q. Sometime after that.
A. Yes.
Q. You do not recall exactly when.
A. No.
Q. You went back there.

A. Yes, sir.
Q. For re-employment.
A. Yes.
Q. Now, you joined this union that you speak of, sometime in the month of November, did you?
A. Yes, sir.
Q. And I suppose you are just a member?
A. Yes.
Q. That is, you are not an officer?
A. No.
2117 Q. Or very active in it?
A. No, sir.
Q. You are not on any of the committees of the union, are you?
A. No.
Q. You had not talked to Mary Atkinson, your forelady, about your union affiliations—
A. No.
Q. —or connections, had you?
A. No.
Q. Or anything about the subject at all—had you?
A. No, sir.
Q. Before February the 17th.
A. No.
Q. That is right, is it?
A. That is right.
Q. Were you on the picket line?
A. No, sir.
Q. You had nothing to do with that?
A. No, I didn't.
Q. You merely joined the union?
A. That's all.
Q. And you said nothing about it.
A. No.
Q. And so far as you know, nobody in the plant, so
2118 far as the management was concerned, knew anything about your having joined that organization, did they?
A. No, they didn't.
Q. That is right, is it?
A. That is right.
Mr. Block: That is all.
Mr. Walsh: Just a moment, please.

Redirect Examination.

Q. (By Mr. Walsh.) During the time you worked there, did anybody ever criticize the way you did your work?

A. No.

Q. Did you receive any raises during the time you worked for the company?

A. Yes, sir.

Q. What raises did you get?

A. Well, I think that we were getting 37½ cents per hour, and then that was raised to—or, no. Pardon me. We were getting 35 cents per hour, and that was raised to 40 cents per hour.

Q. And that was in November, was it?

A. Well—

Q. November of 1936?

A. I really just don't remember exactly when it was; but sometime along in there.

Q. Did everybody get a raise at the same time?

2119 A. Yes.

Q. That was the general raise.

A. Yes.

Q. That everybody got.

A. Yes, sir.

Q. Did you get an individual raise at all?

A. No.

Q. You just participated in the general raise; is that right?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Block: Just one other question, if you please, Miss Bissonnette.

Recross Examination.

Q. (By Mr. Block.) When you went back after the trouble was over there, were you asked to fill out an application?

A. I went back, and I was going to see Mr. Henry, I wanted to see Mr. Henry; and they told me to fill out an application, so I did.

Q. And you did fill one out?

A. Yes, sir.

Q. Do you know whether others filled out applications along about that time?

A. Well—

Q. Other girls, or women?

2120 A. I don't know.

Q. I see. When was this, that you filled this application out?

A. Well—

Q. Was it on the same day that you reported back?

A. That I—

Q. Was it on the same day that you reported back, that you filled out the application?

A. No.

Q. Was it on the same day that you went back and talked to Miss Atkinson?

A. No, sir; I called up Mary Atkinson the day before I fifiled it out.

Q. Oh, I see. And then the following day—

A. I went down.

Q. —you went down.

A. Yes, sir.

Q. And filled out the application?

A. Yes, sir.

Mr. Block: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: Just a moment, please, Miss Bissonnette.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) What kind of a

2121 position is this that you have now?

A. Where I work now?

Q. Yes.

A. I am demonstrating for Wonder Bread.

Mr. Swiren: Do you bake it, or eat it?

Q. (By Trial Examiner Dudley.) Is that a permanent position?

A. Well, I really do not know, but I do not think it is.

Q. Well, have you been hired for any definite period of time?

A. No, sir.

Q. How much do you get?

A. My pay?

Q. Yes.

A. $22 a week.

Trial Examiner Dudley: That is all.

Mr. Block: There is just one further question, if the Examiner please.

Q. (By Mr. Block.) How long have you worked there?

A. I have worked there for about three weeks—or something like that, I believe it is.

Q. Did anybody tell you that your employment there was a temporary one?

A. No, sir, they didn't, but of course I imagine it will be, though, because as soon as they finish—they are just having an advertising campaign.

2122 Q. I see.

A. (Continuing.) And as soon as they finish that, why, then I imagine I will be through.

Q. But there has been nothing said either by you or your employer, about it being a temporary matter?

A. No, sir.

Mr. Block: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you very much.

Mr. Walsh: Do you want this young lady for any further testimony?

Mr. Swiren: No.

Mr. Walsh: She may be excused, then?

Mr. Swiren: Yes.

Mr. Walsh: You may go, Miss Bissonnette.

(Witness excused.)

Mr. Walsh: If the Examiner please, I have one of those men who was ill at the time we came to him, and I would like to put him on the stand at this time. He belongs in group 2, I believe.

Trial Examiner Dudley: Group 2?

Mr. Walsh: Yes.

Trial Examiner Dudley: All right.

Mr. Walsh: Joe Hoff.

JOSEPH HOFF, called as a witness for the National
2123 Labor Relations Board, being first duly sworn, testified as follows:

Mr. Collins: Your name is Joseph Hoff?

The Witness: Yes.

Mr. Collins: Have you been served with a subpoena, over in the court room, to appear before the Examiner?

The Witness: How is that?

Mr. Collins: Were you served with a subpoena, with a paper, to appear here before the Examiner?

The Witness: Yes.

Mr. Collins: If the Examiner please, I wish to claim the privilege of the witness under Section 11, paragraph 3, of the National Labor Relations Act.

Trial Examiner Dudley: The privilege is granted the witness.

Direct Examination.

Q. (By Mr. Walsh.) Where do you live?
A. 1516 Washington.
Q. Waukegan?
A. Yes, sir.
Q. How long were you employed at Fansteel?
A. About three and a half years, or four years, or something like that.
Q. What did you do there?
A. I worked in the crib.
Q. Where?
2124 A. In the tool room.
Q. The crib, in the tool room.
A. Yes, sir.
Q. When did you join the union?
A. Oh, let me see. I joined the union sometime in August, I think it was.
Q. In August of last year?
A. Yes.
Q. Was the plant operating between February the 17th and February the 26th of this year?
A. When the strike was on?
Q. Yes.
A. No, sir, I don't think it was. I never was down there; I wasn't there at all.
Q. You were not there?
A. No, sir.
Q. Did you report for work on the day that the trouble broke out there?
A. Yes, sir.
Q. Were you working steady at that time?
A. I was working steady, yes, sir.
Q. Did you usually work on the day shift?
A. I was on the day shift, yes, sir.

Q. Were you working the day the trouble broke out?
A. Yes, sir.
2125 Q. Did you stay in the buildings with the men?
A. No, sir.
Q. What time did you leave the building that you were in?
A. Oh, about—I couldn't say exactly, but maybe along about between two-thirty and three-thirty, or something like that.
Q. Shortly after the trouble broke out?
A. Yes, sir.
Q. Right after the trouble broke out, then, you left; is that correct?
A. Yes, sir.
Q. Now, during the time the strike was on there, did you go down around the plant at all?
A. No, sir.
Q. You never showed up down there at all?
A. Except to get my pay.
Q. How?
A. Except for my pay.
Q. Except to go after your pay?
A. Yes, sir.
Q. When did you get your pay?
A. Well—
Q. Was it a regular pay day?
A. I got two pays.
Q. You got two pays during the time the men were
2126 in the buildings, did you?
A. Yes, sir.
A. And one of them was on February the 20th, was it, a regular pay day?
A. I think it was—or the day after.
Q. Now, after the plant reopened, did you make an application for your job back?
A. About a month after.
Q. A month after that?
A. Yes.
Q. To whom did you talk about getting your job back, at that time?
A. The office girl, I guess.
Q. The office girl?
A. Yes.
Q. Did you fill out a new application?
A. No.

Q. What did the office girl tell you about getting your job back?

A. Well, she called up, and she said, "Your place is filled."

Q. Whom did she call up, if you know?

A. The superintendent, Anselm.

Q. She called Mr. Anselm?

A. Yes.

Q. And that is the message that you got, that your
2127 place was filled; is that right?

A. That is the message she gave me, that my place was filled. That is what she said to me. Mr. Anselm didn't say anything to me.

Q. Mr. Anselm did not say anything to you.

A. No.

Q. Did you talk to anybody else around there at all, about your job?

A. No, sir.

Q. During the time the men were in the buildings did you help get any food, or bedding, or clothing, or flashlights, or anything else, in to them?

A. No, sir, I am too old for that. I didn't do anything.

Q. You are too old.

A. Yes.

Q. What was your hourly rate of pay when you were working for the company?

A. At the last it was 45 cents per hour.

Q. 45 cents per hour.

A. Yes, sir.

Q. How much did that amount to per week?

A. $18.

Q. $18 a week?

A. Yes, sir.

Q. Have you earned anything since you were—or, since—

2128 A. Since the strike?

Q. Since the strike.

A. No, sir.

Q. Were you one of the respondents in the contempt case, and one of the defendants in the injunction case?

A. No, sir, I didn't think I was. Not so far as I know, but I don't know, really.

Q. And you never—I will withdraw that. His answer is that he does not know.

Mr. Swiren: Well, he was not. Let us have the record correct.
Mr. Walsh: He was not?
Mr. Swiren: He was not.
Mr. Walsh: All right. You may inquire.

Cross-Examination.

Q. (By Mr. Block.) Mr. Hoff.
A. Yes, sir?
Q. Would you mind telling us how old you are?
A. How?
Q. Would you mind telling us your age?
A. No, sir.
Q. How old are you?
A. I was 74 my last birthday.
Q. How long did you work at Fansteel?
A. Oh, about four years, I think, or something like
2129 that; three or four years.
Q. What did you do there?
A. I told him I was in the tool room, taking care of the tools, and doing odd jobs around there.
Q. I did not hear that. You say you were in the tool room?
A. How?
Q. You were in the tool room?
A. Yes, sir.
Q. What building was that in?
A. I think that was building No. 5—ain't it? No. 3, or No. 5—I think it is.
Q. Well—
A. No. No. 3.
Q. All right. And what was your work more particularly; just what sort of work did you do, in the tool room?
A. I was handing out tools, the tools that you would ask for; I would give them to you.
Q. And after February the 26th, you went back there, did you?
A. To work?
Q. You went back to the plant after February 26th, did you?
A. No.
Q. You did not?
A. What do you mean "go back"?

Q. I say, after the trouble was over, there, when the factory reopened, or the plant reopened, you went back
2130 there, did you?

A. For my money.

Q. I see.

A. For my pay.

Q. You went back there for your pay.

A. Yes, sir.

Q. When was that?

A. After that I never went near it.

Q. When was that?

A. Oh, about a month or so after, I applied for work.

Q. You got your pay?

A. I got my pay.

Q. At that time did you speak to somebody about your employment there?

A. How is that again?

Q. At that time did you ask about going back to work?

A. Well, I can't say that I asked officially. I asked to see the superintendent, and the girl asked me my name, and I gave her my card, and she said she would call me back; and when I came back she said that my place was filled.

Q. That your place had been filled?

A. Yes, sir.

Q. Was the plant running then?

A. Yes, sir.

Q. You know that, do you?

2131 A. Oh, yes.

Q. I mean, the day you had your talk with the young lady, the plant was in operation, was it?

A. Yes, sir.

Q. Now, what date was that, about?

A. How?

Q. About when was it that you had this conversation with the young lady, when she told you that your place had been filled?

A. Oh, that I couldn't say.

Q. Well—

A. They didn't call me right away, and I couldn't tell you when it was.

Q. Was it two or three weeks after the trouble was over?

A. No.

Q. Or longer?

A. Six weeks after.

Q. Six weeks?

A. Yes, sir.
Q. That would be sometime in April, then, when you went there, would it?
A. Sometime in April, I guess.
Q. Of 1937.
A. Yes, sir.
Q. And that was the first time that you had gone
2132 back there to look for work, was it?
A. That was the first time that I went back there to look for work, yes, sir.
Q. That is right, is it?
A. That is the first time, and the only time.
Q. The first and only time?
A. Yes, sir.
Mr. Block: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: That is all, Mr. Hoff; thank you very much.
(Witness excused.)
Mr. Walsh: Now, if the Examiner please, while I still have the Board's case open—
Mr. Swiren: Counsel, you wanted these documents sometime during the hearing, and I do not think they have been given to you as yet.
Mr. Walsh: What are these?
Mr. Swiren: They are documents that you asked for.
Mr. Walsh: These are the proposals, are they not, of the union?
Mr. Swiren: Yes.
Mr. Walsh: Made on the 3rd and 5th of March.
Mr. Swiren: Yes.
Mr. Walsh: All right. If the Examiner please, I
2133 notice that during the course of the hearing, I had neglected to introduce in evidence Board's Exhibit No. 12. It was merely marked for identification; at page 266 of the record, I had it marked for identification. At this time I desire to move for its introduction into evidence.
Mr. Swiren: What is it?
Mr. Walsh: That is the copy of the contract which you furnished.
Trial Examiner Dudley: It may be admitted in evidence as Board's Exhibit No. 12.
(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO 12.)

Mr. Walsh: Now, at this time, if the Examiner please, I would like to offer in evidence a copy of the proposal made by Lodge 66 to the Fansteel Company.

Trial Examiner Dudley: Of what date?

Mr. Walsh: Dated March 3rd, 1937. And I think, to make it more orderly, we ought to give this an exhibit number right along with those other two or three exhibits which were introduced, of about that time. I will check them in just a moment.

Then I will also offer in evidence the proposal made by Lodge 66 to the Fansteel Company, which letter itself is not dated, but I take it it is the one that was made on the 5th of March, to which the company replied.

Mr. Swiren: I think that is correct. Let me see it a
2134 moment, please.

Mr. Walsh: One is dated March 3rd, and I believe the other was of March 5th.

Mr. Swiren: We object, of course, to both of these exhibits going into evidence, if the Examiner please, upon the following grounds: first, they occurred considerably beyond the dates mentioned in the complaint; there is no charge with respect to failure to bargain, in March; and secondly, it appears that a substantial number of the men were not employees at the time, and there is no evidence as to how many actual employees were represented, and there is no evidence as to any authority to act, and no showing that the lodge represented the number of persons, or any of the persons who were employed by the company, or the number necessary for their claim for collective bargaining representation. There is no showing of any representation at all as of that date.

Trial Examiner Dudley: The objection is overruled, and the two documents are admitted in evidence, subject to your objection and exception.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 25-A and 26-A.)

2135 Mr. Walsh: If the Examiner please, at the time I introduced Board's Exhibits 18, 19 and 20, which were certain applications for membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America, I asked leave to withdraw those cards and substitute a typewritten list of the names and dates that the application were made for membership.

After the introduction of those cards they were delivered

to counsel for respondent. Counsel has made photostatic copies for his own use, and has furnished me with a list.

Mr. Swiren: There are some corrections in that list. If you want to go through it, I will call them off to you, and you can make them.

Mr. Walsh: Very well. This may be off the record, I take it.

Mr. Swiren: Yes.

Trial Examiner Dudley: This is off the record, Mr. Reporter.

(There was a discussion off the record.)

Mr. Walsh: The Examiner will recall that Board's Exhibit No. 19 was a list of undated cards, or rather was a group of undated cards. The substituted exhibit will be a list of those cards. Now, I checked the testimony of such witnesses as testified, and from their testimony determined the date that they joined the union. As to those persons appearing on
2136 the list who did not testify, I checked a list of the dues cards of the union, and found what time the dues cards of the union indicate they were members, and when they first began paying dues.

For the persons whose dates were obtained from the record, I have marked those with an "R"; with a footnote indicating that the date was secured from the testimony, in the record; and as to those persons whose dates of application to the union were obtained from the union list, I have marked them with an "X" and put a footnote in to that effect.

Mr. Swiren: May I see that, please?

Mr. Walsh: I was just going to give it to counsel. I will turn it over to counsel, so that he may have ample opportunity to check it.

Mr. Swiren: If the Examiner please, as to the list appearing as Board's Exhibit 19, we have no objection to any information shown by the record in this case; but of course we have no knowledge of what the union records or accounts show; we have never seen them; although the Examiner may recall that we have tried to have them brought into court, but have not succeeded so far.

With the exception of the information that is derived from the union records, to which we have had no access, and which are not a part of this Board's record, we have no objection.

2137 Trial Examiner Dudley: I think the objection is well taken, Mr. Walsh. If we are going to have—

Mr. Walsh: I cannot take serious issue with counsel, as to the ground of his objection to those, if the Examiner please. I will arrange to withhold this one, and will later produce those records, if possible, and give counsel an opportunity to check them.

Mr. Swiren: Why not just cross those out, then, so that the rest may go in.

Mr. Walsh: Well, let us do this—

Mr. Swiren: Or withhold it until later.

Mr. Block: Why not withhold it, and take care of it ltaer.

Mr. Swiren: Yes, why not withhold it? We might be able to agree on it.

Mr. Walsh: Very well. I will do that. We can probably straighten it out.

Mr. Swiren: Yes.

Mr. Walsh: Then I will withdraw Exhibit 19, and submit only substituted exhibits 18 and 20.

Mr. Swiren: There is no objection to those substitutions. Of course, there was an objection to the cards.

Mr. Walsh: Yes.

Mr. Swiren: Which we are not waiving now.

Trial Examiner Dudley: No. Board's Substituted Exhibits 18 is a list of names appearing on the 84 cards
2138 dated before September 10, 1936.

Mr. Walsh: Yes.

Trial Examiner Dudley: And Board's substituted Exhibit No. 20, is the list of names appearing on the cards dated subsequent to September 10, 1936.

Mr. Swiren: It ought to be "Dated September 10th, and prior thereto."

Mr. Walsh: Pardon me?

Mr. Swiren: "September 10th and prior thereto."

Mr. Walsh: Yes.

Mr. Swiren: They were not all prior to September 10th.

Trial Examiner Dudley: All right; just so the record will be straight.

(The documents referred to were received in evidence, in substitution of original BOARD'S EXHIBITS NOS. 18 AND 20.)

Mr. Walsh: Now, Mr. Swiren, have you had an opportunity as yet to get up that wage range?

Mr. Swiren: I have the notes, and I will dictate it during the noon hour.

Mr. Walsh: All right.

Mr. Swiren: I thought we might get it in as an exhibit, instead of going through each department.

Mr. Walsh: That is all right.

Mr. Swiren: I will make an extra copy for you, if you
2139 want it.—

Mr. Walsh: Thank you.

I think that is all at this time, if the Examiner please, and I will again close my case, reserving the right, however, to ask leave to open if something develops which we have not got in at this time.

Mr. Swiren: Now, if the Board has closed its case again, we would like to make some motions, if the Examiner will hear us at this time.

Trial Examiner Dudley: Yes, sir.

Mr. Swiren: The Examiner will recall that there was considerable testimony with respect to an alleged failure to reinstate some of the men and women who testified.

At the outset of that testimony, we objected to the testimony with reference to reinstatement on the ground that reinstatement necessarily involved, first, employment; secondly, a severance of employment, by discharge or otherwise; and third, a reinstatement, or vacating of the severance or discharge. No effort was made to show, and no testimony was offered, with respect to the severance of employment.

Our motion was overruled at that time, with the suggestion that at a later time a motion to strike would be considered; and we are now making a motion to strike all of the testimony with reference to the alleged failure to reinstate:

First, because there is no evidence whatever of dis-
2140 charge, which would be necessary, in any event, for any possible reinstatement or re-employment; and secondly, because there was no evidence whatever connecting up the alleged failure to reinstate, with any union activity or union membership.

I might say in that connection, Mr. Examiner, that the only effort made to connect that up was in the case of one of the witnesses, Starovich, who testified that he was sure he was not reinstated because Anselm had seen him on the picket line. No other witness even went that far.

There is no connection whatever, and in view of that, we

think that the testimony with respect to the matter of reinstatement should be stricken from the record in its entirety.

Trial Examiner Dudley: As to which employees?

Mr. Swiren: As to all of the employees who testified with respect to reinstatement, because they gave no evidence as to the discharge of those employees; there was no evidence as to the discharge of those employees. The only evidence as to the discharge is in connection with the decree and order, certified copies of which were introduced, showing that these men who seized and held the plant, have been discharged for such violent seizure; and also the testimony of two witnesses, that they heard that evening that the men in the plant had been discharged.

2141 Trial Examiner Dudley: Would you add to that, the answer of the respondent—

Mr. Swiren: That they were in the plant?

Trial Examiner Dudley: —as evidence of discharge?

Mr. Swiren: No, Mr. Examiner. The answer of the respondent does not state anything, other than what the order and decree state.

Trial Examiner Dudley: It is practically the same.

Mr. Swiren: It says that the men who were in the plant, were discharged.

Trial Examiner Dudley: The answer of respondent also states certain people were not reinstated for various reasons, in the different categories as there given.

Mr. Swiren: The answer of course is not the record.

Trial Examiner Dudley: But the answer is a verified pleading.

Mr. Swirén: Yes.

Trial Examiner Dudley: And part of the record in the case.

Mr. Swiren: That still does not supply the discharge element, Mr. Examiner, nor does it supply any connection between the alleged failure to reinstate, and any union activity or union membership. The complaint is that they were not reinstated because they were members of the union, attempting to engage in collective bargaining for their mutual

2142 aid and protection. But I say there is no evidence of that.

Trial Examiner Dudley: Do I understand the position of respondent to be that these people are still employed at the plant?

Mr. Swiren: No. Our position is—

Trial Examiner Dudley: Respondent admits that these employees were discharged, does it not?

Mr. Swiren: Our position, Mr. Examiner, is that anybody who was concerned in the seizure and retention of the plant, was discharged by that announcement.

Trial Examiner Dudley: Then as to those people who were in the plant at the time the announcement was made, respondent would state that those people have been discharged?

Mr. Swiren: For seizing and holding the plant.

Trial Examiner Dudley: And were discharged at that time?

Mr. Swiren: For seizing and holding the plant.

Trial Examiner Dudley: Yes. Now, as to those people who were not in the plant at that time, referring particularly to the women employees of the plant, and the men employees who were on the night shift, and returned, and never resumed work and never got on the inside: Does respondent claim that those people were discharged, or does it claim that they are still employees of the company?

Mr. Swiren: Well, we cannot bulk the cases, Mr. Examiner. I do not think that there has been any evidence
2143 of any discharge, and I do not think the way to prove discharge is to ask us to admit or deny, upon the argument of a motion to strike. I think the way to prove discharge is produce testimony, and unless there is that testimony, I am afraid that their case must fall.

Trial Examiner Dudley: You mean, you do not take any position as to whether they were discharged or not?

Mr. Swiren: I do not think that we are called upon, on a motion to strike, to supply a deficiency in the evidence on the part of the plaintiff. Each case has got to be considered upon a separate state of facts.

Mr. Walsh: Then your motion to strike does not run to these other groups?

Mr. Swiren: Oh, yes, as to which there is not any evidence of discharge whatever. As to the others, there is some evidence of discharge for engaging in unlawful conduct. But that is the only evidence there is, on discharge.

Mr. Walsh: Well, Mr. Swiren, I believe by your answer, you do admit that they were discharged, and you set up the reasons for the discharge.

Mr. Swiren: We admit that people who were in the plant, who have testified that they were participating in the seizure,

were discharged. As to the others, there is no evidence of any discharge, or any admission of any discharge; and of course that brings us to the proposition that as to
2144 those who were discharged, the only evidence is that they were discharged for engaging in an improper activity and an unlawful activity. There is not any obligation to retire or reinstate anybody who engaged in that kind of activity.

It does not make any difference what the nature of the unlawful activity is, or how lofty the purposes may have been behind that illegal conduct. Or, to put it in another way, with respect to that group: Assume that a man is discharged for engaging in unlawful or improper conduct, and then after that he engages in some union activity. It does not make any difference whether he did engage in that union activity subsequently or not. If he was discharged properly, then there is no obligation of any kind, to reinstate him.

Trial Examiner Dudley: Well, I will rule that the respondent has put in testimony here as to the discharge of the people who were in the plant, by its two exhibits, the decree and the order of the Circuit Court of Lake County; and also by its answer. In each of the cases, counsel for the Board or counsel for the respondent, or both, brought out on examination and cross examination of these witnesses the fact that they did come within the category of the people who occupied the buildings, and were discharged; and therefore there is ample evidence of discharge of those people.

Mr. Swiren: Pardon me, if the Examiner please, but may I interrupt you at this point, so that you will get our
2145 position on that? Apart from that, you have got two other points in that connection: No. 1, that the evidence shows a proper discharge, namely, a discharge for seizing and holding the plant; and secondly, that there was no effort, even, made to establish any other purpose for the discharge.

The complaint charges, first, that the discharge was for union membership and union activities; and second, that the failure to reinstate was because of that. Of course if they fail on their discharge, that is, if the men were properly discharged, if the discharge did not constitute a violation of the Act, then there is no obligation to reinstate, and there would be no question of reinstatement.

Upon a subsequent motion that we want to make, if this motion is overruled, namely, a motion to dismiss, we want to consider the question of proof of union activities in connection with the alleged failure to reinstate.

But on this point, we are faced with this cold proposition, that men were discharged for engaging in unlawful and violent conduct, and that no evidence of any union activity as the basis of that discharge has been introduced; and as a matter of fact the evidence is that at no time was anybody discharged for any union activity, or even threatened with discharge.

Trial Examiner Dudley: On that point, I will rule that the evidence indicated that those men were discharged
2146 for union activity, inasmuch as the evidence indicates clearly that they were discharged because of participation in a strike, which respondent claims involved illegal acts, and which illegal acts respondent claims were basis of or justification for, discharge.

As far as that point is concerned, I will reserve decision until later, however, because that is the real point of this case.

Mr. Swiren: Right.

Trial Examiner Dudley: As I see it.

Mr. Swiren: Right. Now, we have another motion—

Trial Examiner Dudley: Just a moment further.

Mr. Swiren: Pardon me.

2147 Trial Examiner Dudley: As to the people who did not participate in the holdings of the buildings, and as to whom respondents now state that there is no evidence of discharge, the testimony is that those people were not in the buildings; that most of them participated in the strike in one way or another, by assisting in bringing in food, or supplies, or giving support to those in the buildings; that after February 26th the plant reopened, and those people received their pay, and were in most cases asked to turn in their passes; that the company asked some of the employees to return to work, but did not ask some of those people to return; that the company hired other people; that in some cases the company refused the request of those people to return to work; and the hiring of other people by the company upon the reopening of its plant, without requesting these people to return to work, constitutes a refusal on the part of the company to reinstate these people.

Now, there is still a different category, and that is, the people whom the company approached and asked to come back to work, usually through the foremen of the company. Those people in most of the cases which were developed refused to come back to work on the ground that they would

not return to work unless the entire group of strikers, as such, was allowed to return to work.

There I will rule that the offer of the company to reinstate people on condition that they would return to
2148 work as individuals, without a recognition of the union, was based upon a condition opposed to the provision of the Wagner Act, and was tantamount to a refusal to reinstate.

Mr. Swiren: I think I ought—

Trial Examiner Dudley: I think that takes in all of the categories.

Mr. Swiren: I think I ought to call—

Trial Examiner Dudley: Therefore, I will overrule the motion.

Mr. Swiren: I think I ought to call the attention of the trial examiner to the fact that every witness who testified with respect to the matter of reinstatement said that it was unconditional; that the company did not put any condition on it; that the company did not say, "We will not recognize the union", or "We will take you back if you will agree not to be a member", or "We will take you back if you agree not to bargain collectively", or "We will take you back if you agree that we do not have to recognize your union."

It was an unconditional offer. The refusal was a conditional refusal.

Mr. Walsh: I think that has been covered by the examiner's analysis of the situation.

Mr. Swiren: I just wanted to call it to the attention of the examiner.

Trial Examiner Dudley: Yes.

2149 Mr. Swiren: We except to the ruling.

Trial Examiner Dudley: Your exception will be noted.

Mr. Swiren: I would now, if the examiner please, like to present another motion, to strike the testimony of Art Holm, Sr. The charge is that he was discharged because he was suspected of membership in Lodge 66. No serious effort was made,—and, in fact, no effort at all was made to prove any such suspicion. The only evidence is that he could not be a member of the union, as a foreman, and there is no evidence that everybody did not know it.

Trial Examiner Dudley: I will call counsel's attention to the fact that the complaint states that Art Holm, Sr., was discharged, and his reinstatement was refused for the reason that respondent suspected he was a member of the union,

and that he had engaged in concerted activities with other employees for his and their mutual aid and protection.

Mr. Swiren: There is no evidence of his engaging in any such activities.

Trial Examiner Dudley: There was considerable evidence, most of which was brought out on respondent's cross-examination, to the effect that he had assisted in the strike by assisting to collect and pass in supplies of one kind or another.

Mr. Swiren: But there is no evidence connecting any such thing with his discharge at all.

Trial Examiner Dudley: Well, I will reserve my rul-
2150 ing on that part of the motion.

Mr. Swiren: He was not a member of the union, and there was no suspicion of it.

Trial Examiner Dudley: His situation involves a rather difficult analysis.

Mr. Swiren: Now, if the examiner please, we move that the entire complaint, and each and all of the allegations thereof, be dismissed; and for the convenience of the examiner and counsel for the Board, we think it might be well to take up our suggestions in this respect under the heading of each point.

Mr. Walsh. You have it written out?

Mr. Swiren: No.

Mr. Walsh: It would be very convenient if you did, and had extra copies.

Mr. Swiren: No, I just have this original draft, and we are going to have to make some corrections in it. I cannot very well let you have this.

Mr. Walsh: Would it not be better, then, if we just sat down and talked about it, and then filed it as one of the exhibits?

Trial Examiner Dudley: I think so.

Mr. Swiren: Well, if there is a waiver and consent on the part of counsel for the Board and the examiner, I suppose that will be all right, but the rules provide that motions
2151 and the grounds of motions shall be stated orally and incorporated in the record.

Mr. Walsh: That is correct.

Mr. Swiren: However, as I say, if we can have a complete agreement—

Trial Examiner Dudley: I take it you state the grounds of your motion in that typewritten draft there?

Mr. Swiren: Yes.

Mr. Keele: If the examiner please, might I interrupt at this point—

Trial Examiner Dudley: Yes.

Mr. Keele: If the motion, as written, may either be read into the record, or it may be stipulated that, as drafted, it was read into the record—

Mr. Walsh: I expect it had better be read into the record, Mr. Examiner.

Mr. Keele: Yes.

Trial Examiner Dudley: Very well.

2152 "UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Thirteenth Region

In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66	Case No. XIII-C-80

MOTION TO DISMISS.

"Now Comes the respondent, Fansteel Metallurgical Corporation, and after the conclusion of the evidence offered in behalf of National Labor Relations Board, the complainant, respectfully moves that the complaint in the above-entitled proceedings against this respondent, and each and all of the allegations thereof, be dismissed, upon the ground that none of the material allegations is supported by the evidence.

"In support of this motion, respondent shows the following:

1. No evidence whatever was introduced to support any of the allegations of paragraphs 8, 9, and 10 of the complaint.

(a) No testimony whatever was offered with respect to the following persons names in paragraph 8 of the complaint: Gus Canelakes, George Kallio, David Nostell, Elsworth Peters, Peter Skarbalus, Victor Weatherhead.

(b) The only testimony as to discharge was the following:

(1) Art Holm, Sr., was discharged. The testimony shows that he was not and could not be a member of the union but

was discharged for lack of efficiency. No evidence is
2153 offered to show any suspicion or belief on the part of the respondent that Holm engaged in union activity.

(2) Jasper Leskovec was discharged on November 24, 1936, and that discharge was in no way connected with his membership in the union. Leskovec took no active part in any union activities.

(c) All the other persons named in paragraphs 8 and 9 of the complaint testified and either denied that they were discharged or remained silent on the subject.

(d) It was stipulated that no employee was discharged by the respondent prior to the evening of February 17, 1937, by reason of union membership, collective bargaining, or mutual aid and protection activities or other activities authorized or permitted under the National Labor Relations Act.

The testimony further shows that at 2:30 o'clock in the afternoon of February 17, 1937, a group of employees of the respondent evicted respondent's officers, foremen, and other employees from buildings 3 and 5 of respondent's plant, and with force seized those buildings, barricaded themselves therein, and remained therein until February 26, 1937, when they were dislodged and evicted by the Sheriff of Lake County.

The record further shows that such retention was in violation of an injunctional order entered by the Circuit Court of Lake County on February 18, 1937, and that the Sheriff's efforts to enforce that injunctional order and a subse-
2154 quent writ of attachment were resisted with force and violence by the men in possession of buildings 3 and 5.

Two witnesses testified that they understood that the men occupying buildings 3 and 5 were discharged in the evening of February 17, 1937, about four hours after the buildings had been seized. There was no evidence introduced even remotely connecting that vague reference to discharge with any cause other than the violent seizure and retention of buildings 3 and 5.

2. No evidence was introduced to support any of the allegations of paragraphs 11 and 12 of the complaint.

(a) No evidence was introduced with respect to failure to reinstate the following persons:

Gus Canelakes, George Kallio, David Nostell, Elsworth Peters, Peter Skarbalus, Victor Weatherhead.

(b) No evidence was introduced to show any connection or relationship whatsoever between the failure to reinstate

the other persons named in paragraph 11 of the complaint and any membership in the union or any collective bargaining or mutual aid and protection activities, with the possible exception of John Starovich, whose testimony is referred to below.

(c) The following persons listed in paragraph 11 of the complaint admitted that they participated in the violent and unlawful seizure and retention of buildings 3 and 5 of respondent's plant, in violation of the injunctional order
2155 of the Circuit Court of Lake County, Illinois, and the resistence to the Sheriff's execution of such writ, or actively aided and abetted the persons participating in such violence and unlawful conduct to continue their unlawful retention of respondent's property for the period from February 17, 1937, February 26, 1937:

Joseph Aigner, Andrew M. Anderson, Steve Ark, Nick Benkovich, Roy Brown, Edward Brunke, Al Bunton, Jerome Camernick, Jr., Ted Christianson, Joseph Chudy, Lester Crump, W. D. Crump, John Cudith, Jr., Leo P. Daluga, Vincent Dietmeyer, Clarence Dreyer, Harold Dreyer, Raymond DuBois, Thomas E. Fagan, Charles E. Fulkerson, Jr., Charles E. Fulkerson, Sr., Angelo Galbavy, Phil Graimer, John Grom, Stanley Grum, Eugene D. Hendee, Fred Hensley, Victor Hertel, Art Holm, Jr., John W. Jackoway, Oscar Johnson, Tony Kancilja, Edward Kaucie, John Kondrath, Frank Latz, Herman Latz, Otto Latz, Joe Lima, Eric Lindberg, Steve Luczo, Elmer Luke, William D. Magness, Paul Makovec, Nate Mogel, George Mondro, Frank Moxey, Frank Musech, Anton Nagode, Ted Ohlson, Joseph Petraitis, John Parski, Merritt Pratt, Robert Pratt, Bartol Puntarich, Harry H. Rayner, Joseph Richveis, Andrew Rode, Arvo Rommppaine, Ed Ruck, Frank Scheuer, Edward Schuman, Luther Small, George W. Smith, Carl A. Swanson, Charles Warner, Paul Wells, Allen White, Fred Yaeger, Frank Zelenick, Mike Zelenick.

2156 (d) The following persons admitted on the witness stand that they had been offered reemployment by the respondent without any conditions attached to the offer, but that they had refused and were unwilling to return to work:

Clarence Dreyer, Robert Pratt, Arvo Rommppaine, Eric Lindberg, Luther Small, Roy Brown, Paul Wells, Edward Schuman, John W. Jackoway, George Smith, George Mondro, Frank Moxey, Otto Latz, Isabelle Recktenwald, Evelyn Gramer, Fern Gartley, Vivian Johnson, Marguerite Siefert, Harry H. Rayner.

Some of these gave no explanation for their refusal of the offers of reinstatement, while others stated that they refused the offer because all of the persons holding buildings 3 and 5 were not also reinstated.

(c) Elizabeth Luczo, Joan Bissonnette, Joseph Hoff, and others testified to being merely members of the union and having engaged in no activity as far as the union is concerned.

(f) Evidence relating to reinstatement of particular individuals is as follows:

(1) In respect to Art Holm, Sr., and Jasper Leskovec, the discharge evidence is noted above.

(2) Jack Taylor testified that he was only a part time employee from time to time and, as a matter of fact, did not joint Lodge 66 until March 11, 1937, long after production was resumed.

2157 (3) John Starovich denied participation in the seizure of buildings 3 and 5 and testified that after the plant was reopened and operating he engaged in picketing, that the plant superintendent took particular note of such activity, and he was certain that his failure to be reinstated was due to such picketing. As a matter of fact, the evidence shows his unwillingnes to return to work except with all of the men who had occupied buildings 3 and 5.

(4) No evidence whatever was offered even remotely connecting the failure or refusal to reinstate or reemploy any of the persons named in paragraph 11 with their membership in Lodge 66, or any activity looking toward collective bargaining or the mutual aid and protection of the employees of the respondent.

"3. The evidence disproves the allegations of paragraph 12 of the complaint. The evidence shows that former employees were reemployed or given offers of reemployment, notwithstanding that they were members of Lodge 66 and that there was no discrimination against such members in any reemployment.

"4. The evidence failed to establish the allegations in paragraph 7 of the complaint.

(a) The evidence with respect to Alfred Johnstone showed that he had been engaged for a proper purpose and in no way interfered with, intimidated, restrained, or coerced the members of Lodge 66 in connection with the exercise of

2158 their rights under section 7 of the Act. The evidence showed that Johnstone took no active part in the union

and no member of the union was discharged or in any way disciplined because of Johnstone's activities or as a result of Johnstone's employment.

(b) The evidence shows that A. J. Anselm had been employed by the respondent or its affiliated subsidiaries for 20 years, during a large portion of which time he was plant superintendent. There is no evidence to indicate any improper purpose in his resumption of his duties as superintendent.

(c) There is no evidence as to any impropriety in Kondrath's transfer to the master mechanic's laboratory, no evidence of complaint, and no evidence of interference with any proper union activities. The evidence showed complete satisfaction with his new position.

(d) No evidence whatever was offered to sustain the charge that respondent 'sent, caused to be sent, or acquiesced in the sending of fellow workers and others to the homes of striking workers and offered to reinstate them in their employment as individuals upon the abandonment of employees of their rights under the provisions of section 7 of the Act.' The evidence all showed that the solicitation of employees to return to work was absolutely unconditional and that neither union membership or bargaining activities was discussed or mentioned.

(e) No evidence was offered to show that any of the 2159 acts shown under paragraph 7 of the complaint had for their purpose or effect any intimidation, coercion, restraint, or interference with the lawful exercise of the rights by respondent's employees under the terms of section 7 of the Act, or that such acts constituted unfair labor practices under the terms of section 8, subdivision 1 of the Act.

"5. With respect to the first charge in paragraph 13 of the complaint, the evidence shows that on or about September 10, 1936, the plant superintendent caused a petition to be circulated among employees of the respondent for an expression by them as to whether they desired an employees' representation plan.

One of the employees testified that he was told when given the petition, and that he, in turn, told the employees to whom he presented the petition, that everyone was at liberty to sign or not as he desired. There was no coercion or any threats made. The record shows further that no further steps were taken and that the matter was abandoned at that point and was not heard of since last September.

"6. None of the charges in paragraph 13 of the complaint with respect to the Rare Metal Workers of North America, Local No. 1, was proved by the evidence. Upon this subject the evidence is as follows:

(a) The company had no part in initiating or sponsoring the organization.

2160 (b) Neither the company nor any member of the management participated in the organization or solicitation of members. No threats, either of loss of employment or otherwise, were made to any employee.

(c) The union received no financial or other support of any kind from the company.

All that was shown is that permission was given (1) to the organized committee of workmen to post notice of their initial meetings on the bulletin boards; (2) to hold the initial meeting for determining whether the union was to be formed, and the organization meeting, in vacant space in a building owned by the company, outside of the plant; and (3) to use the company's mimeographing machine for notices and ballots for the two meetings.

The record further shows that no member of the management had anything to do with either of the meetings or was even present; the men conducted the meetings themselves and voted by secret ballot.

The record shows that the second meeting was held in the same building by reason of the fact that the violence employed by Lodge 66 in the sitdown and thereafter had made it impossible for the employees to obtain an outside hall. No coercion, restraint, interference, or domination of any kind was shown.

"7. All questions with respect to collective bargaining raised by paragraphs 5 and 6 of the complaint, with

2161 Lodge 66 or in September 1937, are now moot for the following reasons:

(a) The Rare Metal Workers of America, Local No. 1, represents, for collective bargaining purposes, approximately 230 out of 256 employees in the production and maintenance units. The record shows that that union is a bona fide labor organization representing more than a majority of the employees and hence is the exclusive bargaining agency for all of the employees.

(b) Those men and women shown by the record to have unconditional offers of reinstatement, or not to have been entitled to reinstatement by reason of their participation in

the unlawful violence and retention of buildings 3 and 5, are not employees and should not be considered in determining persons for whom Lodge 66 is authorized to act.

The elimination of these men and women from those for whom Lodge 66 purports to act leaves considerably less than a majority of the employees, which majority is required under the provisions of section 9 (a) of the National Labor Relations Act.

"By reason of all the foregoing matters, the respondent's motion to dismiss the complaint is made herewith and should be granted by the Trial Examiner and by the Board.

"Fansteel Metallurgical Corporation,
Respondent,

"By: Levinson Becker Peebles & Swiren and
Sidney H. Block, *counsel.*"

2162 Mr. Walsh: Now, if the examiner please, in reply to paragraph 1 (a): I will advise the examiner that as to Gus Canelakes, George Kallio, David Nostell, Ellsworth Peters, Peter Skarbalus, and Victor Weatherhead that I reserved the right to reopen the case, to put testimony in on those persons should they present themselves. Whether they will present themselves before the completion of the trial or not, I do not know.

I suggest that at this time, at least, ruling on the motion to dismiss the complaint as to them be reserved.

Mr. Swiren: We think they ought to be produced in the complainant's case, and having failed to produce any evidence as to them, the motion is properly presented.

Trial Examiner Dudley: I will reserve ruling on paragraph 1 (a) until the close of the hearing, in order that we may see what evidence may be produced later on, in connection with these men.

Mr. Walsh: Now, with respect to paragraph 1 (b)-sub (1): We have already referred to the testimony of Art Holm, Sr., and the examiner took under advisement the application to strike that testimony, as I recall it.

Will the same ruling be made here?

Trial Examiner Dudley: The same ruling will be made here. The examiner will take this under advisement also, with reference to 1 (b).

2163 Mr. Walsh: 1 (b)-(1).

Trial Examiner Dudley: Yes, 1 (b)-(1).

Mr. Walsh: All right.

Trial Examiner Dudley: As to 1 (b)-sub-(2), the examiner will also take that under advisement, so that he may have time to read the testimony a little more carefully in that connection.

Mr. Swiren: Our second ground with respect to all of the parties, in paragraphs 8 and 9 of the complaint, is that there is no evidence of discharge other than the evidence of discharge for the seizure of the plant. W. D. Crump is named in paragraph 9 of the complaint, and there was no evidence of the discharge of Crump at all.

As to the others, the evidence is that they were discharged for engaging in an unlawful and violent act. When that is tied in with the stipulation that there had not been, from July until that very moment, any discharge for union activities, and the evidence shows not even any threat of discharge, it seems to me perfectly clear that the motion is well-taken and ought to be granted.

Mr. Walsh: As I recall it, Mr. Swiren and Mr. Examiner, the stipulation covered the matter of discharge up to February 17th.

Mr. Swiren: Right.

Mr. Walsh: Is that right?

2164 Mr. Swiren: That is correct; up to the evening of February 17th.

Mr. Walsh: Yes. Crump, of course, was on the night shift and did not go to work; and I found that he was in the same category with a number of other people concerning whom we later introduced considerable evidence, in the group that I term "those persons outside of the fence"; or, as you have classed them, "aiders and abettors."

Mr. Swiren: Yes, but there is still no evidence of any discharge, as charged specifically in paragraph 9 of the complaint.

Mr. Walsh: Well, of course, we can engage, I presume, in a long line of argument here that will not avail us anything. I feel that we have proved that he was discharged, and that you failed to reinstate him.

Mr. Swiren: That is a separate part of your complaint.

Mr. Walsh: Well, if I catch you one place, it does not make much difference where it is.

Mr. Swiren: Of course, you have not caught us any place yet. That is your difficulty.

Mr. Walsh: I think, as a matter of fact, if the examiner please, you should overrule that paragraph 1, sub-(c).

Trial Examiner Dudley: Mr. Swiren, paragraph 1 (c) does not refer to W. D. Crump in particular, does it?

Mr. Swiren: Well, he is in paragraph 9, Mr. Exam-
2165 iner; he and Holm are the only ones named in paragraph 9 of the complaint.

Mr. Walsh: 1 (c) you have reference to, Mr. Engineer?

Trial Examiner Dudley: Yes. You list a number of people named in paragraphs 8 and 9, together.

Mr. Swiren: Yes.

Trial Examiner Dudley: Considering them in toto.

Mr. Swiren: Yes.

Trial Examiner Dudley: You except therefrom only the people mentioned above, in your motion.

Mr. Swiren: That is right. That includes, as far as paragraph 9 is concerned, only Crump; and as far as paragraph 8 is concerned, all of them except Leskovec, and those who did not appear in the testimony.

Trial Examiner Dudley: That is correct. Well, I will overrule the motion on the same grounds which I gave for the overruling of your motion to strike the testimony concerning the refusal to reinstate certain employees.

Mr. Swiren: And the record shows our exception to each adverse ruling.

Now, we come to 1 (d).

Trial Examiner Dudley: I will overrule the motion contained in paragraph 1, sub-(d), for the same reason.

Mr. Swiren: Why not just go through all of them in the same way, if the examiner please, announcing your rul-
2166 ing? I take it, when we have completed the entire motion, we may note a single exception to all adverse rulings.

Trial Examiner Dudley: Yes.

Mr. Swiren: Will that be agreeable?

Trial Examiner Dudley: Yes, that is perfectly satisfactory.

Mr. Walsh: That is agreeable. In 2 (a) you have the same situation as you have in 1 (a), that the testimony of Bissonnette and Hoff be stricken.

Mr. Swiren: Right.

Trial Examiner Dudley: With reference to paragraph 2 (a), I will reserve my decision until the end of the hearing.

With reference to paragraph 2 (b), I will overrule the motion for the reasons previously stated.

Mr. Swiren: Well, let me understand: Is the examiner now ruling that discharge for participating in the seizure of buildings 3 and 5, or failure to reinstate on that ground, were discharge or failure to reinstate, respectively, by reason of union activities, or collective bargaining activities, or any other legal activities?

Trial Examiner Dudley: I am ruling that there is sufficient evidence to show that the discharge and the refusal or failure to reinstate were based upon union activities, so as to raise an important legal question, and justify submitting this matter to the Board for a ruling. For that reason
2167 I am overruling your motion to dismiss.

I will overrule the motion set out in paragraph 2 (c) and paragraph 2 (d).

I will overrule the motion set out in the paragraph 2 (c) for the same reasons applying in connection with paragraph 2 (b).

I will overrule the portion of the motion set out in paragraph 2 (d) because the evidence indicates that the refusal to return to work was based upon the fact that any return to work would have to be as individuals, and involves a failure on the part of respondent to recognize the union, or to take back employees as members of the union; and that such failure constituted a condition of the offer that was in violation of the Wagner Labor Relations Act.

Mr. Swiren: Now, with reference to paragraph 2 (e)—May this be off the record just a moment, Mr. Examiner?

Trial Examiner Dudley: Off the record.

(Discussion off the record.)

Mr. Swiren: As to those that admitted that they were not active in the union, and did not do a thing,—and those two witnesses were typical illustrations of that group—there cannot be any evidence whatever of discharge or failure to reinstate for union membership or union activity.

Trial Examiner Dudley: I will rule on 1 (e)—

Mr. Swiren: You mean 2 (e).

2168 Trial Examiner Dudley: —2 (e), as you have stated it, the evidence would indicate that those people were not taken back because of union activity, which consisted of assisting in the conduct of the strike, and, in some cases, serving on the picket line.

Mr. Swiren: I am talking, Mr. Examiner, about the group who testified that they had no participation whatever, and these two witnesses who testified this morning were typical

examples of that group. They did not serve on any picket line; they were not active in any way; they did not do anything to further the sitdown strike, or any of the activities of the union.

Trial Examiner Dudley: Well, there were very few of those people, but they all testified to membership in the union, as did Miss Bissonnette this morning. Of course, in some cases there were other reasons for the refusal to reinstate, which were likewise shown, as in the case of Mr. Hoff.

Mr. Swiren: Yes, that is a typical case. He came back 6 weeks later and asked for his job, and was surprised to find that it had been filled.

Trial Examiner Dudley: I will reserve ruling as to those until the end of the hearing, and until we have the names of those people whom you want considered, so that I can consider the testimony of the particular individuals.

2169 Sub-Paragraph (4) (f): That refers to the people mentioned in Paragraph 11 of the complaint.

Mr. Swiren: That is correct.

Trial Examiner Dudley: And not mentioned in sub-paragraphs 1, 2 and 3 of the motion.

Mr. Swiren: That is correct.

Trial Examiner Dudley: As to—

Mr. Swiren: Well, no; it also includes those mentioned under 1, 2 and 3. They are in the same class. There is no evidence as to them, either.

Trial Examiner Dudley: Well, in that event, as to sub-paragraphs (1), (2) and (3) of paragraph (f), I will reserve my ruling on the motion.

As to paragraph (4)—

Mr. Swiren: Subdivision (4) of 1 (f).

Trial Examiner Dudley: As to sub-paragraph (4) of paragraph (f)—

Mr. Walsh: (2).

Mr. Swiren: 2 (f).

Mr. Walsh: 2 (f)-(4).

Mr. Swiren: Yes.

Trial Examiner Dudley: All right. As to that, I will overrule the motion, except insofar as it pertains to the immediately preceding sub-paragraphs (1), (2) and (3).

Mr. Walsh: As to that portion, the ruling will be re-
2170 served, will it?

Trial Examiner Dudley: As to that portion, the ruling will be reserved, yes.

I will overrule the motion contained in paragraph 3, which is largely a denial of the conclusions set forth in the complaint.

I will overrule the motion as far as it is contained in paragraph 4, sub-paragraph (a).

As to sub-paragraphs (b) and (c), I will reserve ruling until the end of the hearing.

As to sub-paragraph (d), I will overrule the motion.

As to sub-paragraph (e), I will reserve ruling until the end of the hearing.

Regarding paragraph 5, of the motion, I will overrule it, because the evidence indicates at least some proof that respondent may have violated Section 8, sub-paragraph (2) of the Wagner Labor Relations Act, although it does show that any such violation, if any, had apparently ceased, as far as that particular activity was concerned, long before the strike.

As to paragraph 6, of the motion, I will reserve judgment until the end of the hearing.

Mr. Swiren: Now, paragraph 7 is based in part upon paragraph 6 and in part upon the previous ones.

Trial Examiner Dudley: I see.

Mr. Swiren: Before we get to 7, however, Mr. Ex-
2171 aminer, I think we ought to say this: The record is complete, so far as the Board's case is concerned, on paragraph 6, and I think that a ruling on 6 may dispose of considerable testimony.

For example, as noted in Paragraph 7 of the motion, if the complaint is not well taken with respect to the Rare Metal Workers of America, Local No. 1, that is an important item in and of itself; and further, it is important because then the questions of collective bargaining in September and February become moot questions.

Today, that is the proper bargaining agency, and I think that the Examiner ought to give careful consideration to an immediate ruling on that, because, if it is unfavorable to the Board I think it will eliminate considerable evidence.

Trial Examiner Dudley: I will reserve my ruling on that. You set up quite a bit about it in paragraph 6 of your answer, and I think there is at least enough here to make it worth while to hear what the testimony of respondent will develop on that point.

Mr. Swiren: Well, after all, this is the testimony of the people who engaged in the organization of the local.

Trial Examiner Dudley: Well, I will reserve my ruling on that.

Mr. Swiren: That still leaves paragraph 7.

Trial Examiner Dudley: I will overrule the motion set forth in paragraph 7, because it is based largely upon
2172 hoped-for conclusions that have not as yet been reached by the Board.

Mr. Keele: Based on what?

Trial Examiner Dudley: On hoped-for conclusions; that is if the Board rules that the Rare Metal Workers of America was in good standing, and so forth, and if the Board did not order reinstatement.

Mr. Swiren: Either one.

Trial Examiner Dudley: Well, all right,—then what you say in paragraph 7 might be true.

Now, what we have here is a motion to dismiss the entire complaint, with paragraphs and sub-paragraphs giving, really, reasons in favor of the motion, rather than giving individual motion to dismiss.

Mr. Swiren: Well, it is a motion with respect to the entire complaint, and each and all of the allegations thereof.

Mr. Walsh: Yes.

Mr. Swiren: So that it is incumbent upon the Examiner to rule with respect to the complaint in its entirety, as we conceive it; and also the individual sections, as we have discussed them in connection with the reasons.

Trial Examiner Dudley: Well, I have ruled on the individual sections.

Mr. Swiren: Yes.

Trial Examiner Dudley: And on the entire complaint, I will overrule the motion to dismiss, but I will state this
2173 for the record, for the benfit of counsel for the respondent, that over the week-end I gave the matter rather careful consideration, thinking that you might make such a motion; and I wish to call attention to this fact, that if the Trial Examiner did grant the motion to dismiss, then the matter would go to the Board on the basis of the present testimony, without including any testimony on behalf of respondent, except such as has been brought out on cross examination; and the Board might well, then, overrule my motion, or my granting of your motion to dismiss—

Mr. Walsh: Might reverse it.

Trial Examiner Dudley: Yes; in which case it would

either have to come back here, to take further testimony, or we might make the attempt to submit it on the basis of the present testimony; which would not be desirable in any respect.

Mr. Swiren: I might say that if that concern were to apply in each instance, there would never be a motion allowed by an Examiner; and yet the rules and regulations of the Board do provide for such motions, and the allowance thereof, in fairness to the parties affected.

Trial Examiner Dudley: It would mean that there would never be the granting of a motion to dismiss unless there was an exceedingly clear case.

Mr. Swiren: Well, of course we think that this is an
2174 exceedingly clear case.

Trial Examiner Dudley: You certainly do not have an exceedingly clear case here.

Mr. Swiren: Oh, we think we have. I do not think there is any evidence to sustain the principal points at issue, under the complaint.

Trial Examiner Dudley: Well, I will deny the motion on the grounds that the complaint and the evidence certainly state a prima facie case of violation of the Act; and that the evidence of respondent is therefore desirable in the record. Also on the basis that it is better to submit the testimony of both the complainant and respondent at the same time to the Board in a case like this.

Mr. Swiren: Shall we proceed, then?

Trial Examiner Dudley: Yes.

Mr. Swiren: May the record show our exception to each adverse ruling.

I may say to the Trial Examiner, we are preparing an amendment to the answer, to conform to the proof already in, that I mentioned at the last session. We have not quite completed it, but we will get it in during the next day or two.

Mr. Walsh: That is all right.

Trial Examiner Dudley: That is satisfactory.

Mr. Walsh: Will it raise any new issues?

Mr. Swiren: No.

2175 Trial Examiner Dudley: You may want to submit some sort of a brief, covering your argument as to the law, rather than try to set forth your position in your answers.

Mr. Swiren: Pardon me?

Trial Examiner Dudley: I say you may want to submit some sort of a brief covering your argument as to the law.

Mr. Swiren: Perhaps.

Trial Examiner Dudley: Off the record.

(There was a discussion off the record.)

Mr. Keele: This, then, brings us up to the point of opening our case.

Mr. Walsh: Of going forward with your case.

Trial Examiner Dudley: Yes.

Mr. Keele: I would like to say to the Trial Examiner that we have given considerable thought to the question of the manner and method of introducing the defense, with a view of cutting the time consumed down to the minimum.

Trial Examiner Dudley: The Examiner of course is gratified to hear that.

Mr. Keele: In connection therewith, we have worked out among ourselves a tentative stipulation, which, if agreed to by the government, or by counsel for the Board, and by the attorney for Lodge 66, which is a party, will I think materially lessen the time to be consumed, and will probably as effectively bring the matter, from the point of view of
2176 both parties, or all three parties, if we may so designate them, before the Trial Examiner and before the Board, as though it were all covered by evidence.

Naturally, if we are to make it as all-inclusive as possible, it is going to require some time. I do not mean by that, that it is going to require any unreasonable length of time, but it is going to require time which will run into an hour or two, at the most optimistic estimate.

Now, my thought is that if we could have a short time to go over the matter with Mr. Walsh and Mr. Collins, we may be able to agree at least in principle, and if we can, then the details can be filled in later, which will permit us to proceed on the theory that the stipulation will be entered as of this time, that is, as the first step in the case; and then we can fill in such details as we cannot agree upon in the stipulation.

I believe that what we have in mind seems to be reasonable, covering matters which are largely in the record, as to which there is reasonable basis for believing we can agree, I think; and if we do, we will cut several days from the time necessary to be consumed by the defense.

I therefore at this time suggest that we be allowed an adjournment of, say, an hour, so that we will have ample time to discuss this matter.

Mr. Walsh: Let me suggest this, if the Examiner
2177 please: It is now 11:15.

Mr. Swiren: Why not stop right here until 2 o'clock?

Mr. Walsh: Yes, I think we should suspend right now until after luncheon.

Mr. Keele: Two o'clock?

Mr. Walsh: Yes. We can retire to the office of counsel, where we can thresh this thing out.

Mr. Keele: By adjourning early, Mr. Examiner, as I say, I think we can undoubtedly save a great deal of time.

Mr. Walsh: I think we can probably save three days time anyway.

Mr. Block: I think if you suspend at this time until two o'clock, Mr. Examiner, it will give us ample time to cover it.

Mr. Keele: May I say again, Mr. Examiner, I think all all of the lawyers concerned will agree that if we do this, it will cut three or four days off the time to be consumed by the defense.

Trial Examiner Dudley: Shall we recess at this time until two o'clock then?

Mr. Keele: Suppose we recess until 2 o'clock, and then if we have not finished by that time, we may have to ask for a little further time.

Trial Examiner Dudley: That will be agreeable; we will
go to two o'clock, and if you need further time, we will
2178 take a further recess.

Mr. Keele: All right.

Trial Examiner Dudley: Let the record show that the hearing at this time is recessed until 2 o'clock this afternoon.

(Whereupon, at 11:15 o'clock A. M. a recess was taken until 2:00 o'clock P. M.)

After recess.

(The hearing was resumed at 2:00 o'clock pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Banker: Mr. Examiner, they are still working on the stipulation, and will probably require another hour's time.

Trial Examiner Dudley: Very well. Let the record show, Mr. Reporter, a recess until 3 o'clock.

(Thereupon a recess was taken until 3 o'clock P. M.)

Trial Examiner Dudley: Let us proceed.

Mr. Walsh: If the Examiner please, I offer in evidence at this time as Board's Exhibit No. 35, the letter referred to

by Mr. Art Holm, Sr., when he was on the witness stand the other day, dated February 25th, 1937, on the stationery of Fansteel Metallurgical Corporation, addressed to Mr. Arthur Holm, signed by A. J. Anselm, superintendent.

Mr. Swiren: No objection.

2179 Trial Examiner Dudley: Without objection, the letter and the envelope in which it is contained, are admitted as Board's Exhibit No. 35.

(The documents referred to were received in evidence, and marked "BOARD'S EXHIBIT NO. 35.")

Mr. Swiren: At this time, if the Examiner please, we offer in evidence stipulation of facts agreed to by and between all of the parties hereto and ask that it be admitted in evidence and marked Respondent's Exhibit 7.

Mr. Walsh: In the stipulation itself, if the Examiner please, I have reserved—

Mr. Swiren: The right to call further witnesses.

Mr. Walsh: —the right to call further and other witnesses.

Mr. Swiren: Yes.

Mr. Walsh: Further, I am objecting to the consideration, as evidence, of any of the things stipulated to, on the ground of their incompetency, immateriality and irrelevancy to the issues presented by the complaint.

Mr. Swiren: And in addition to your reservation in the stipulation, you are now making that objection on the record.

Mr. Walsh: I am now making that objection on the record, separate and apart from the one that is included in the stipulation.

2180 Trial Examiner Dudley: The stipulation will be entered as Respondent's Exhibit 7. The objection of the Board is overruled.

(The document referred to was received in evidence and marked "RESPONDENT'S EXHIBIT NO. 7").

Mr. Block: Mr. Anselm, take the stand, please.

Mr. Swiren: This witness has been sworn.

Mr. Walsh: Yes.

Trial Examiner Dudley: Yes, he has testified.

A. J. ANSELM, called as a witness for the Respondent, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Block.) You are the same Mr. Anselm who has testified previously in this case.

A. I am.

Q. Mr. Anselm, were you present on either of the occasions, that is on February 19th or February 26th, 1937, when the sheriff was engaged in evicting or attempting to evict certain persons from buildings 3 and 5 of the Fansteel premises?

A. I was present on both of those occasions, yes, sir.

Q. On those occasions—just in order to shorten it up, will you describe what if anything you saw coming from the buildings that were occupied by the men?

A. Well,—

Trial Examiner Dudley: And give us the dates of each.

The Witness: How?

2181 Trial Examiner Dudley: Give us the dates.

The Witness: The 19th and 26th.

Trial Examiner Dudley: No, I mean when you are testifying and referring to a particular occasion.

Mr. Walsh: In other words, start your story by saying "On the 19th" —and so forth.

A. Well, on the morning of February the 19th, I believe there was 80 deputy sheriffs present in the yard, more or less, and they started trying to evict the employees from Building 6 first.

Q. (By Mr. Block.) What building?

A. Or rather, from Buildings 5 and 6.

Q. Buildings 5 and 6.

A. That was the adjacent building.

Q. Yes?

2182 A. And as they approached the south door of building 6, a barrage of wire drawing spools, bolts, nuts, endmills, and other iron parts, such as pipe, came out of the second and third floors of building 5.

They were showered at the deputies, and the deputies, after that, started to break in the south door of building 6, with a battering ram. After that door was down, a number of men inside the building turned a 40-gallon Foamite fire extinguisher on the deputies. They emptied that, and then

the brought into play a fire hose; they turned that on the deputies. They also showered on the deputies, quart bottles of acid, and continued that until the deputies were through. Their excuse for withdrawing at that moment was that there was too much acid in the air, and that they were afraid of being blinded.

Q. Now, Mr. Anselm, this was on the occasion of February the 19th, 1937, was it?

A. Right.

Q. What time was it, about?

A. Oh, it was after daylight. I remember distinctly that the sheriff asked to wait until after daylight, so that the men in the buildings would know that they were deputy sheriffs.

Q. Were any of those men in policemen's uniform?

A. Oh, I would say that over one-third of them were in uniform.

2183 Q. Was the sheriff of Lake County, Illinois present?

A. Yes.

Q. With those men?

A. The sheriff of Lake County, Illinois, and his chief deputy, were present.

Q. And where were those men—or, let me withdraw that. First, will you explain what you mean by building 6, and what connection it has with building 5, so that the record will be clear.

A. Well, building 6 is a one-story building west of building 5. Building 5 is a four-story building; they are tied together.

Q. And where were the sheriff and his deputies with reference to building 6?

A. They were on the west side of building 6.

Mr. Swiren: We are going to offer these in a moment, and they might help the Examiner and counsel to follow the testimony of the witness.

Mr. Block: Yes. Let us have these photographs marked, if counsel has not objection.

Mr. Walsh: No.

The Witness: They were right here, on the west side of the building. (Indicating.)

Mr. Swiren: Just a moment.

Mr. Block: Just a moment. Let the reporter mark 2183 the photographs.

Mr. Swiren: Respondents' exhibits 8 and 9.

Mr. Block: For identification.

(The photographs referred to were marked Respondents' exhibits Nos. 8 and 9 for identification.)

Q. (By Mr. Block.) Now, Mr. Anselm, referring to respondents exhibit 8 for identification: is that a true and correct representation of the buildings in question; that is to say, 6 and 5.

A. Yes, sir.

Q. That picture, however, was taken after February the 26th, was it not?

A. That is correct.

Q. After the eviction of the men?

A. Yes, sir.

Q. But so far as being a true representation is concerned, in other respects, I mean so far as the location of the buildings is concerned, that is correctly represented in that photograph, respondents' exhibit 8 for identification, is it?

A. Yes, sir.

Q. All right. Now, then, the sheriff and his men, were, as I understand it, at which side of building 6?

A. They were on the west side of building 6.

Q. And these various objects and things which you
2185 say you saw thrown out, came from where, with reference to those two buildings?

A. Well, they came from the second and third floors of building 5.

Q. And on what side of the building?

A. That is also on the west side of building 5.

Q. How did they come out of the building?

A. Through the windows.

Q. Out through the windows, or what?

A. How?

Q. Through the windows, or how?

A. Through the windows, yes, sir.

Q. Well, what happened to the windows? Were any of the windows broken?

A. Yes, sir some of the windows were broken from throwing out those missiles at that time.

Q. By whom were they broken?

A. They were broken by the m , inside of the building.

Q. And where were the other m , that is, the sheriff and his men, with reference to the buildings? That is, you have told us where they were, but I mean, how close were they, or how far away?

A. Well, when they were battering in the door, of course, they were right at the building.

Q. And when, with reference to that time, did the things which you have described, come out of the windows?

2186 A. Well, they started to come out of the windows just before they started battering in the door, and they continued all through that battering, and they continued on after that for possibly half an hour or 45 minutes.

Q. From where was the acid poured, if you know?

A. The acid came out of the second floor of building 5.

Q. And where, with reference to the men outside, the deputies, and the sheriff?

A. Well, it came down over the roof of 6, and dropped down around their feet, over the west end of building 6.

Q. What kind of acid was it?

A. Sulphuric acid, about 1400-gravity.

Q. And do you know anything about the effect of sulpuric acid upon the human body, or human flesh?

A. I do.

Q. Will you just state that briefly: Let us make it as short as we can.

A. It will burn the flesh, wherever it strikes it.

Q. And this particular acid, do you know whether it came from your supply, or do you normally have a supply of acid in the plant, when it is in operation?

A. Yes, sir, we have a supply of acid.

Q. Where is it kept?

A. It is kept in the shipping room in building 5, on the first floor.

2187 Q. I see. And this acid which you saw, came from what floor?

A. This particular acid came from the second and third floors of Building 5, and also from the Tool Room Floor of Building 3.

Q. Now,—

Mr. Walsh: Pardon me. At the same time.

The Witness: Sir?

Mr. Walsh: All at the same time?

The Witness: At the same time, all in the same battle.

Mr. Walsh: All right.

Q. (By Mr. Block.) Now, then, these other objects which you have described: what about their size, and weight, and so forth?

A. This one in front of me is known as a wire drawing

spool, which makes a very efficient deadly weapon when you use it to hit somebody with.

Mr. Block: Well, so that we can follow your testimony intelligently, let us ask to have this designated as respondents' exhibit 10 for identification.

(The object referred to was marked respondents' exhibit No. 10 for identification.)

Q. (By Mr. Block.) Will you describe it?

A. Well, as I just said, it is a wire drawing spool.

Q. About what size and weight is it?

2188 A. Oh, that is about 5½ inches in diameter, and weighs about three pounds.

Mr. Block: Now, this next object, we will ask to have designated as respondents' exhibit No. 11 for identification.

(The object referred to was marked Respondents' Exhibit No. 11 for identification.)

Q. (By Mr. Block.) Will you describe that?

A. This is a sharp-edged tool, known as an end-mill, and can be very well used as a deadly weapon.

Q. What is its size and weight?

A. Why, it is an inch and three-quarters in diameter, and about 8 inches over all.

Q. How much does it weigh, approximately?

A. About 4 pounds.

Q. All right. Now, this next one, we will have to have designated as respondents' exhibit 12 for identification.

(The object referred to was marked Respondents' Exhibit No. 12 for identification.)

Q. (By Mr. Block.) Will you describe that?

A. Respondents' exhibit 12 for identification is the same type of tool, but it only weighs about a pound and a half.

Q. All right. Now, directing your attention to these last three exhibits, Nos.—

Mr. Swiren: 10, 11 and 12.

2189 Q. (By Mr. Block.) (Continuing.)—10, 11 and 12, did you see those objects, or similar objects coming from Building 5 on the occasion which you have just described and referred to?

The Witness: Give me that question again.

Trial Examiner Dudley: Read it.

(The question was read.)

A. I did.

Q. (By Mr. Block.) What is the answer?

A. I did.

Q. Now, did they all come from some one window, or more than one window, or what was the fact?

A. No, sir, they came from all of the windows on those two floors of that building, and they also came from the second floor on the north side of the building 3.

Q. And the acid came from which building, did you say?

A. The acid came from both buildings.

Q. How about the Foamite?

A. The Foamite came from Building 6 only, at that time.

Q. Now, then, so far we have discussed buildings 5 and 6.

A. Yes.

Q. What, if anything did you see about building 3 on that same occasion, if you did see anything?

A. Other than the acid, and the tools and pieces of pipe, and bolts, and so forth, that I have already described,
2190 that is all I saw coming from building 3.

Mr. Walsh: Has there been any offer of these exhibits yet, Mr. Examiner?

Trial Examiner Dudley: No.

Q. (By Mr. Block.) Were there any supplies of tantalum or contact points coming out of that building on that occasion?

A. Not on that occasion, no, sir.

Q. Not on that occasion?

A. No.

Q. All right. Showing you respondent's exhibit No. 9 for identification, I will ask you if you know what that represents, or what that is a picture of?

A Well, that is a 40-gallon Foamite fire extinguisher, and it is used with a special pump, designed to extinguish oil fires.

Q. Where is it normally kept?

A. It is normally kept on the shipping room floor, in building No. 5.

Mr. Walsh: Just to keep the record straight, might I interrupt at this point to ask a question?

Mr. Block: Certainly.

The Witness: This does not illustrate where that normally belongs.

2191 Mr. Walsh: No. You refer to the shipping room. Where is the shipping room?

Q. (By Mr. Block.) Where is the room that you speak of as the shipping room, Mr. Anselm?

A. The shipping room is on the first floor of building No. 5.

Q. Now, where did you say you saw this tank on that day—or on the morning of February the 19th?

A. I saw that tank on the morning of February the 19th, yes, sir.

Q. I say, where was it at that time?

A. It was at the foot of the ramp, in building 6.

Q. On what floor?

A. The first floor.

Q. The first floor.

A. Yes.

Q. Of building 6, you say?

A. Yes, sir. That would be west of its normal location.

Q. In whose possession was it, or who was using it at that time?

A. Well—

Q. I do not mean—

A. It is the duty of the firemen, of course, to operate it.

Q. Well, but who was using it at that time?

A. Why, the men who were inside of the building, were using it.

2192 Q. Now, were you also there on the occasion of February the 26th, when another attempt was made by the sheriff and his men to evict the occupants of buildings 3 and 5?

A. I was.

Q. What, if anything did you see coming out of the buildings on that occasion, buildings 3 and 5?

A. A bottle of tantalum contact points, containing probably 40,000 to 50,000 points, were thrown at the deputies.

Q. Out of which building, if you know?

A. That came out of building 3, the south side, from the second floor.

Q. And was there anything else, that you recall?

A. Yes, sir, there were tools of all descriptions, pipe, bolts, nuts, and acid, showered on the deputies, for over half an hour.

Q. Mr. Anselm, after February the 26th, did you go into the buildings, to inspect them?

A. I did.

Q. Will you describe for the record what you found there in buildings 3 and 5, after your inspection had been made, with reference to machinery, or acid, or anything else? Just tell us what you found after you made the inspection, that

was different from the conditions that existed before the buildings were seized?

A. Well,—

2193 Mr. Walsh: Just a moment. That is objected to, Mr. Examiner as not being material to any issues raised here by the complaint, unless—well, it would not be material on any ground. The condition of the buildings afterward could have no material bearing on the issues raised here by the complaint, nor the defense raised by the answer of respondents.

Trial Examiner Dudley: I will overrule the objection, and admit it for what it may be worth.

Mr. Block: Perhaps I put the question to the witness incorrectly.

Q. (By Mr. Block.) Were you in there, Mr. Anselm on February the 25th, after the men were evicted,—the same day?

A. After the men were evicted?

Q. Yes.

A. Yes, sir. I was in there.

Q. Then, let me ask you, what did you find on February the 26th, after the men were evicted?

A. On the second floor of that building—

Q. Which building?

A. Building 3.

Q. Yes.

Mr. Walsh: Pardon me just a moment further. May I have the record show an objection if the Examiner please to this entire line of questioning?

2194 Trial Examiner Dudley: Yes.

Mr. Walsh: So that I will not have to interrupt counsel's examination.

Mr. Block: That is all right.

Trial Examiner Dudley: The record may show the objection, and the objection is overruled.

A. (Continuing) —known as our tool room—

Trial Examiner Dudley: Just a moment. Off the record, Mr. Reporter.

(Discussion off the record).

Trial Examiner Dudley: Proceed.

Q. (By Mr. Block.) How long after the men were evicted did you enter the buildings in question?

A. Well—

Q. Oh, approximately how long after?

A. Approximately three hours.

Q. Was there anybody in the buildings, or had anybody been in the buildings?

A. I don't think that anybody wanted to go into the building, very bad, at that time.

Q. I see. Well, do you recall whether anyone had been in those buildings?

A. I don't believe that anybody had been in there, except possibly a deputy sheriff.

Q. Except what?

2195 A. Except possibly a deputy sheriff.

Q. All right. Then, will you describe their condition, just in a general way.

A. Well, on the second floor of the building, in what is known as our tool room, I found—

Q. In which building?

A. (Continuing) —on the table of a drill press, about 14 bottles, one-quart bottles of sulphuric acid; and also lined up with those bottles were four fire extinguishers.

Q. Now, normally, that is, when the plant is operating normally, where would those bottles and those fire extinguishers be?

A. The bottles would belong in building 5, in the shipping room, on the first floor.

Q. Where are they kept in the building?

A. That is where they are normally kept.

Q. In building 5?

A. Yes.

Q. Where?

A. How?

Q. Whereabouts in building 5 would they be kept normally?

A. They would be kept normally in the shipping room, in building 5.

Q. And the shipping room in building 5, I think you said, was—where? On the first floor?

2196 A. On the first floor.

Q. All right.

A. That was on the first floor.

Mr. Block: Now, may we have this photograph marked respondents' exhibit No. 13 for identification.

(The photograph referred to was marked Respondents' Exhibit No. 13 for identification.)

Q. (By Mr. Block.) Mr. Anslem, I will ask you to look at respondents' exhibit No. 13 for identification, and state whether that correctly represents what you found on February 19, 1937, when you entered the building, building No. 5.

A. Building 3.

Q. Or rather, building 3, I should say.

A. Yes, that is correct.

Q. It does?

A. Yes, sir.

Mr. Walsh: February 26th that was, was it?

The Witness: February 26th.

Mr. Swiren: February 26th.

Mr. Block: Yes.

Mr. Walsh: May I see that last one, please.

Mr. Swiren: Certainly.

Q. (By Mr. Block.) How many bottles of acid did you find there at that time, Mr. Anselm?

A. Oh,—

2197 Q. Approximately.

A. Well, there may have been as many as 14 bottles there.

Q. Bottles which you found?

A. Yes, sir, and in addition to them, there were bottles under the tool room foreman's desk.

Q. By the way, let me ask you this: the bottles and the fire extinguishers shown in respondent's exhibit 13 for identification, are those the same which you found there, which you have previously testified about?

A. Yes, sir.

Q. And you found them in the location where they appear in this picture, did you?

A. Yes, sir.

Q. Respondent's exhibit 13 for identification.

A. Yes, sir.

Q. Now, were there some others, that you say you found somewhere else?

A. Yes, sir, there were some others under the tool room foreman's desk, in addition to these.

Q. Well, was that the normal place for them to be, or not?

A. No, sir; it was not.

Q. What else, if anything did you find there—or first, let me withdraw that question.

Will you mark these photographs respondents' exhibits 14 and 15 for identification, Mr. Reporter.

2198 (The photographs referred to were marked Respondent's Exhibits Nos. 14 and 15, respectively, for identification.)

Q. (By Mr. Block.) Referring to respondent's exhibit 14 for identification, which you have in your hands; what does that show?

A. That shows the condition of building 6. The debris on the floor there, I imagine, was knocked over with the fire extinguisher.

Mr. Walsh: I object to that, and move it be stricken.

Q. (By Mr. Block.) What did you find at that point, represented in the picture, when you entered that building?

A. I found the whole inside of the building sprayed with Foamite fire extinguisher.

Q. Does this correctly represent the condition which you found there on that day?

A. Yes, sir.

Q. All right. The next picture is respondent's exhibit—what number?

Mr. Swiren: 15.

Mr. Block: 15 for identification.

Q. (Continuing) I will ask you to describe that picture.

A. Well, this is known as a one-quart Pyrene fire extinguisher, and it was found on the second floor of building 3, in the tool room, on the south side.

2199 Q. And does that correctly represent the condition which you found there on that day?

A. Yes, sir.

Q. Now, what else did you find, if anything, in those building,—I mean, as far as any changes were concerned?

A. Well—

Q. For instance, did you find any wires, or telephone communications, which had been installed during this period of time, which did not exist before February the 17th, 1937?

A. Yes, sir, building 5 and building 3 were hooked up with a new telephone system.

Q. And were supplies which were in the buildings used to accomplish that?

A. Yes, sir, they used supplies which were in the buildings, to do that.

Q. I did not hear.

A. They used supplies which were in the buildings, to accomplish that purpose.

Q. So that communication was furnished between building 3 and building 5—

A. Yes.

Q. —that is correct, is it?

A. Yes, sir.

Q. And how about the condition of the buildings with reference to the windows? Were most of the windows broken?

2200 Mr. Walsh: That is objected to unless they can show that the men inside of the buildings, broke the windows.

Mr. Block: Well, we have shown that they broke some.

Trial Examiner Dudley: The objection is overruled, and the testimony will be admitted.

A. A large number of windows were broken, yes, sir.

Q. (By Mr. Block.) By the way, do you know who broke some of those windows, Mr. Anselm?

A. The people inside of the buildings broke the windows.

Q. That is, during this period from February the 17th to February the 26th, 1937?

A. That is correct.

Q. All right. Now then, will you go on. In buildings 3 and 5, how many windows were broken, if you know, in each of those buildings?

A. Well—

Q. Oh, approximately; not each window. Were there many windows broken in each window?

A. Yes, sir, a great many of the windows were broken in each of the buildings.

Q. What did you find inside of the buildings, in the way of supplies that came from outside, during the period, February 17th to February 26th?

A. Well, we found almost everything; beds, milk cans, radios, sheet music—

2201 Q. Any operas?

A. (Continuing) And we found coffee cans and milk bottles.

Q. I take it that buildings 3 and 5 normally are not equipped with those articles which you have just described, are they?

A. No, sir, not normally.

Q. And that they came into those buildings during the period from February 17th, to February 26th; is that correct?

A. Yes, sir.

Mr. Block: The next number will be what?

Mr. Swiren: 16.

Mr. Block: Please mark this respondent's exhibit 16 for identification, Mr. Reporter.

(The photograph referred to marked Respondent's Exhibit No. 16 for identification.)

Q. (By Mr. Block.) Referring to respondent's exhibit 16 for identification, bearing the photograph purporting to show some of the articles of the kind which you have just described: I will ask you if you recognize whether those are the articles which were removed from the buildings, or similar articles?

A. Well, that just shows only one vanload.

Q. (By Mr. Walsh.) One what?

A. One vanload, one moving-vanload.

Q. (By Mr. Block.) There were others?

A. There were others.

2202 Mr. Block: All right. What is the number of that last one?

Mr. Swiren: 16.

Mr. Block: Please mark this respondent's exhibit No. 17 for identification.

(The photograph referred to was marked Respondent's exhibit No. 17 for identification.)

Q. (By Mr. Block.) Will you look at this picture, Mr. Anselm, marked Respondent's exhibit 17 for identification, and tell us what that purport's to represent?

A. This picture represents a view of the north side of building 3, and brings out the second floor very prominently.

Q. Is that the condition you found that building in on February the 26th, 1937?

A. Yes, sir.

Q. That is, the outside of the building?

A. From the outside, that is the exact condition, yes, sir.

Q. On February the 17th, before the men occupied the plant, the windows in both of those buildings were in what condition?

A. They were in good condition.

Mr. Block: Mark these next two respondent's exhibits 18 and 19 for identification, please.

(The photographs referred to were marked respectively Respondent's exihibits Nos. 18 and 19 for identification.)

2203 Q. (By Mr. Block.) I will ask you to look at respondent's exhibits 18 and 19 for identification, and tell us what they represent, and what you found there on February the 26th—

A. No. 18—

Q. —with reference to what appears in these pictures?

A. Exhibit No. 18 represents the south view of Building No. 3 and it shows a very large percentage of the windows broken in that building.

And exhibit No. 19 represents a west view of the same building, and also shows the windows broken, and the main door broken down.

Mr. Block: That is all.

Mr. Swiren: We offer these exhibits which have been marked for identification, in evidence.

Mr. Block: Yes.

Mr. Walsh: Would you mind withholding your offer until I have had a chance to examine the witness?

Mr. Block: That is all right; that is what I had in mind.

Mr. Swiren: All right.

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Anselm, in the normal course of your operations there, is there any sulphuric acid used in building 5?

A. No, sir, I am sure that there is not.

2204 Q. Do you normally keep sulphuric acid in these quart containers?

A. We keep it in 8-ounce containers, and quart containers.

Q. And that commodity normally is received by you in tank car shipments, is it not?

A. No, sir.

Q. The sulphuric acid is not?

A. No.

Q. Is that received in carboys?

A. Yes, sir.

Q. Of 5 and 10 gallon capacity?

A. Yes, sir.

Q. Were those bottles, some bottles which you would normally use in the course and conduct of the business, or were those bottles which had been brought in from the outside?

A. The bottles are used in connection with the rectifier which we use.

Q. Oh, I see. But they are not used normally to contain sulphuric acid; is that right?

A. Repeat that.
Trial Examiner Dudley: Read it, please.
(The question was read.)
A. They are, yes, sir.
Q. (By Mr. Walsh.) Oh, they are?
A. Absolutely, that is our shipping container.
2205 Q. Oh, I see. I thought they were used for another purpose.
A. Oh, no.
Q. Now, did you make any test of the contents of those bottles?
A. Oh, yes.
Q. On the 26th?
A. Yes, sir.
Q. What test did you make?
A. Well, we found that it was about 1400-gravity sulphuric acid.
Q. It was?
A. Yes, sir.
Q. Is that what you normally ship?
A. Pardon me?
Q. Do you ship that out normally?
A. Oh, yes.
Q. And those containers of acid should normally have been in your shipping room?
A. Yes.
Q. They are shipped out in that manner?
A. They were normally in the shipping room.
Q. That is what I say.
A. Yes.
Q. Ready for shipment?
A. Yes, sir.
2206 Q. All right. Now, did you see anybody operating the Foamite machine?
A. Yes, sir, I did.
Q. How did you see them?
A. I saw them through the door that the deputies had broken down.
Q. As I understand it, on the 19th of February they broke down the door?
A. Yes, sir.
Q. Of building 6.
A. Yes, sir.

Q. And you saw some persons on the inside there who were armed with this Foamite fire extinguisher?
A. I certainly did.
Q. What were they doing with it?
A. Well, they were squirting it at the deputies, out of the door.
Q. Out of the door?
A. Yes, sir. The deputies were on the west side of the door.
Q. On the west side of the door, outside?
A. Yes, sir.
Q. And the men who were operating the Foamite fire extinguisher, you say, were on the inside, east of the door?
A. Yes, sir.
Q. Playing the Foamite gun on the deputies.
2207 A. Yes, sir.
Q. That is, through what had been the door; is that it?
A. What had been the door, yes.
Q. Later on, was that door replaced, before the men were evicted?
A. No.
Q. It was not?
A. No, sir.
Q. That door remained out, then?
A. I think so.
Q. There was no door in the door jamb, or the frame, or the door sill, or whatever it is until after the building was returned to your possession; is that correct?
A. That is my recollection.
Mr. Walsh: Now, may I see respondent's exhibit 8 for identification, please.
Mr. Block: That would be No. 8 that you have right there.
Mr. Walsh: Oh, yes.
Q. (By Mr. Walsh.) Now, I take it from what you have told us here, Mr. Anselm, that the buildings were in good condition, and that most of the windows were in good condition; that is, the glasses were all intact in the buildings, or generally throughout the factory before the 17th of February.
That is correct, is it?
2208 A. Prior to February 17th?
Q. Yes.

A. Yes, sir, I am quite sure of that, because I had just had all of the glass replaced.

Q. You had?

A. Yes, sir.

Q. Now, I believe that the sheriff or his deputy sheriffs, in their attempt to evict these men on the 19th of February, threw a considerable amount of gas projectiles into the buildings, did they not?

A. I believe that they put in all that they had, yes, sir.

Q. Do you know how much, or how many they had?

A. No, I don't.

Q. You would not know the number of canisters, or bombs, or missiles, or whatever they were?

A. No, sir, I would not.

Q. What did they do; did they open the doors and throw them in?

A. No, sir, I don't think they got that far.

Q. Did they throw them through any of the apertures, in the buildings?

A. I believe they shot them through the holes in the windows.

Q. Well, now, the question comes to my mind, what made the holes; the gas projectiles going in, or the missiles 2209 coming out?

A. Oh, no, the missiles coming out.

Q. It was the missiles coming out, you think?

A. Yes, sir; giving the sheriff an opportunity to put his shells in, without breaking the windows.

Q. Oh, of course, we understand that when you shoot a shell through a whole window, something is going to happen. But, of course, you cannot tell us definitely whether all of the shells went through the holes that had previously been made by the missiles coming out or not, can you?

A. I wouldn't swear to that, no, sir.

Q. You mean, you want to be fair about it, do you not, Mr. Anselm?

A. Certainly.

Q. So some of the gas bombs probably went through window panes, don't you suppose?

A. I didn't see any.

Q. You did not see any?

A. No, sir, I did not.

Q. But you did see the missiles coming out?

A. Yes, sir.

Q. Through the window panes; is that right?
A. Oh, yes, indeed, you couldn't help but see those.
Q. But you do not know how many missiles came out, do you?
2210 A. How many?
Q. Yes.
A. Oh, I didn't count them.
Q. No.
A. That would have been a big job.
Q. I imagine that would have taken sometime; is that right?
A. Yes, indeed.
Q. And you do not know how many, or rather, you could not tell us whether any gas bombs broke any of the windows or not, can you?
A. There might have been a gas bomb broke a window, but I could not tell you positively.
Q. Well, do you mean—if there were one thousand gas bombs, you would not suppose that they all broke one window, would you?
A. There wasn't a thousand gas bombs.
Q. But if some gas bombs broke some windows,—I suppose that would happen, would it not?
A. I didn't see it.
Q. All right. Now, you say that on the 19th of February, acid came out of the buildings, and you say that it was 1400-gravity acid.
A. Yes.
Q. Did you make any tests of that alleged acid?
A. Yes, sir, we did make a test.
2211 Q. Did you?
A. Yes, sir.
Q. Where did you get the material from which you made your test?
A. Out of part of a bottle.
Q. It was in a broken bottle, was it?
A. It was.
Q. A bottle which had been broken—
A. It was in a broken bottle but it checked up all right.
Q. How did you test it?
A. Took it over to the laboratory.
Q. What means did you use?
A. Well, the chemist decides that.
Q. Then, what you are telling us about that is what the chemist told you; is that right?

A. No, sir. I can taste sulphuric acid, and it has a peculiar odor all its own, when it is mixed with a mineral oil.

Q. With mineral oil?

A. Yes, sir. The top of that bottle contained some mineral oil. You put the two together, and it has a peculiar odor very much like the odor of rotten eggs.

2212 Q. I see.

A. (Continuing) You do not make any mistake about it, after you have handled it for about 15 years.

Mr. Swiren: Would counsel like to try it?

Mr. Walsh: Of course I am not a chemist, and neither am I an expert on sulphuric acid.

The Witness: Well, let me demonstrate it for you. I will try not to spill any of this around. Just smell it, and smell the rotten eggs.

Q. (By Mr. Walsh.) The bottle which you have just shown me here, Mr. Anselm: is that the type of bottle that is exhibited here in Respondent's Exhibit No. 13, picturing those 14 bottles?

A. That is the type of bottle, yes, sir.

Q. And was the type of material in those bottles, the same as is in this present bottle here on the table?

A. Yes, sir.

Q. What are the chemicals contained in that bottle?

A. The chemicals contained in that bottle are sulphuric acid diluted with a little water, and then there is an American mineral oil in there, with a few grams of ferro-sulphate. That is exactly what that bottle contains.

Q. What is known as "Special Electrolyte", is that right?

A. Yes, sir.

Q. And that is what was in those 14 bottles?

2213 A. Yes, sir.

Q. Which are represented here in Respondent's Exhibit No. 13 for identification.

A. Yes, sir.

Q. Did you make a test of those, or did you make any examination of them?

A. I did not make any examination of those bottles, no, sir, but I made an examination of the acid that was thrown from the windows.

Q. I see. Now, the articles which have been offered here as Respondent's Exhibits Nos. 10, 11 and 12 respectively, Exhibit 10 for identification being a wire drawing tool; Exhibit 11 for identification being an end-mill, weighing about 4

pounds in your opinion; and Exhibit 12 for identification being an end-mill weighing about a pound and a half; did you see those objects come out of the windows?

A. Those particular ones?

Q. Yes, sir.

A. No, sir, I didn't see those particular ones come out of the windows, but I found them around there.

Q. You found them in the yard?

A. That day, yes, sir.

Q. What led you to believe that they came out of the windows?

A. Because you would normally find them up in the tool crib, in the tool room, on the first floor.

2214 Q. That would be the normal place for them, would it?

A. Yes, sir, that is where they are always kept.

Q. Are these articles that you have here on the table, designated as these three exhibits, usable tools, or are they waste tools, or what?

A. No, sir, they are usable tools.

Q. Those are usable tools?

A. Yes, sir. I would like to have you ask me whether I saw this coming out.

Mr. Swiren: What is that?

Mr. Walsh: Maybe I do not want to ask you.

The Witness: Fair enough.

Mr. Swiren: Referring to Exhibit 10?

Q. (By Mr. Walsh.) Now, at what time on February 26th, did this gas attack of which you have spoken, take place?

A. The time?

Q. Yes.

A. Oh, it started at around about five o'clock in the morning I would say.

Q. And at what time did the men leave the building?

A. Six o'clock or thereabouts.

Q. Somewhere around six o'clock?

A. Yes, sir.

Q. Were you on the plant premises from that time on, until the time you entered the building?

2215 A. No, sir; I returned to the office.

Q. That is outside the fence, is that right?

A. Yes, sir.

Q. Now, what time did you enter either or both of the buildings on that day?

A. Oh, approximately two or three hours after.
Q. It took some little time, I presume to ventilate the buildings, did it?
A. Yes, sir.
Q. After the men left?
A. We had gas masks.
Q. Oh, I see. You went into the buildings with gas masks?
A. Oh, yes.
Q. When you finally did go in?
A. Yes, sir.
Q. Now, you are not able to testify as to whether anybody had preceded you in the building or not, are you?
A. No, I am not.
Q. I believe you stated in your direct testimony that perhaps the deputy sheriffs had gone in there ahead of you?
A. The reason why I said that was because I saw deputy sheriffs enter at the fire-escape, while the battle was going on.
Q. I see. So then there were people inside of the buildings, at sometime there while the men were still there
2216 —or—I will withdraw that.
There were people from the outside who did enter the buildings before you did?
A. Yes.
Q. After the men left; is that right?
A. Limited to deputy sheriffs.
Q. Limited to deputy sheriffs only?
A. Yes, sir.
Q. No person not a deputy sheriff entered the buildings I take it—
A. I don't think so.
Q. (Continuing) —between the time that the men left, and the time you went in there, did they?
A. I don't think so.
Q. Did any other officer of the company get in there before you did?
A. I can't answer that question. I believe the deputy sheriffs were the only people in there.
Q. It is your thought that the deputy sheriffs were the only people in there?
A. Yes, sir.
Q. You do not know whether those men, or the deputy sheriffs, then, placed this fire extinguisher in the window, that is represented by picture No. 15 here, Respondent's Exhibit No. 15 for identification, do you?

2217 A. Well, I don't see any reason why a deputy sheriff should put that fire extinguisher in the window.

Q. Well now—

A. It fits that so nicely there, you see.

Q. I know it does.

A. But I will answer your question directly now, Mr. Walsh. What was it again, please?

Mr. Walsh: The reporter will read it.

(The question was read.)

A. I didn't see it placed there.

Q. (By Mr. Walsh.) Did you see these pictures taken, Mr. Anselm?

A. No.

Q. You were not present when any of them were taken; is that correct?

A. I was not present when they were taken, but we can bring in the photographer.

Q. It is your thought that this truly represents the condition of the building?

A. Oh, yes.

Q. I mean, all I want to know is what the facts are.

A. Oh, yes.

Mr. Walsh: I would not request you to bring the photographer in.

Mr. Swiren: Our advertising representative—

2218 The Witness: Those are the actual conditions.

Mr. Swiren: —right there in the plant, took the pictures that day.

Mr. Walsh: For the purpose of broadsides, were they?

Mr. Swiren: How is that?

The Witness: No.

Mr. Swiren: We thought somebody might inquire sometime, as to what the condition was.

The Witness: Yes, we thought that somebody might inquire about that.

Mr. Walsh: I see.

Q. (By Mr. Walsh.) Now, in picture No. 19 here, your Exhibit No. 19 for identification, I believe it is; you say that the deputy sheriffs broke the door in, attempting to gain admission; is that correct?

A. Yes, sir, you are quite right; the deputy sheriffs broke that door.

Q. When were these pictures taken, if you know Mr. Anselm?

A. They were taken that morning sometime.
Q. Sometime during the morning.
A. Yes, sir.
Q. Of the 26th of February.
A. Yes, sir.
Q. I presume that this picture No. 16, Respondent's Exhibit No. 16 for identification, representing the bedding,
2219 and duffle, and these other things, was taken after you had cleaned up the building?
A. That was probably taken—
Q. That was taken later, was it not?
A. That picture there was taken, I believe, later in the day, on the 26th.
Q. It was?
A. Yes, sir.
Q. I see.
A. I am not making that as a definite statement of fact, however.
Q. It does not make very much difference.
A. I think it was later in the day, of the 26th.
Mr. Walsh: That is all.
The Witness: Are there any more questions?
Mr. Block: Yes.

Redirect Examination.

Q. (By M. Block.) Mr. Anselm, do you know what effect the sulphuric acid that we have been talking about here, would have on clothing, or leather?
A. Well, it does not affect wool, but it eats leather very rapidly.
Q. How about other clothing?
A. Cotton clothing?
A. Yes.
2220 A. Oh, it chews up cotton cloth of any kind quite rapidly.
Q. Now, Respondent's Exhibit 10, which is the wire drawing spool before you: did you see that thrown out of the building?
A. Yes, sir.
Q. Where did it land?
A. Well—
Q. I mean, whereabouts, on the ground.
A. It landed at the feet of a deputy sheriff.
Q. On the Fansteel property?

A. Yes, sir.
Q. And was it picked up there afterwards?
A. I picked it up, yes, sir.
Q. And how many more like it, or of the same kind, came out?
A. Oh, many of those came out.
Mr. Block: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused.
(Witness excused.)
Mr. Swiren: May we at this time again offer in evidence Respondent's Exhibits 8 to 19 both inclusive, and ask leave to withdraw exhibits—
Mr. Walsh: 10, 11 and 12?
Mr. Swiren: —10, 11 and 12, substituting photographs thereof, because of their seize and weight?
Mr. Walsh: I object to their being received in evi-
2221 dence on account of their incompetency, irrelevancy and immateriality.
Trial Examiner Dudley: The objection is overruled, and the exhibits will be received in evidence. Exhibits 10, 11 and 12 may be withdrawn, and substituted by photographs thereof.
Mr. Swiren: There is no objection to the substitution, I take it, Mr. Walsh?
Mr. Walsh: No, Mr. Swiren, I have no objection to the substitution.
Mr. Swiren: All right.
(The photographs and articles referred to were received in evidence and marked respectively RESPONDENT'S EXHIBITS NOS. 8 to 19, both inclusive.)
Mr. Block: Mr. Zersen.

EDWARD ZERSEN, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Block.) Will you state your name.
A. Edward Zersen.
Mr. Walsh: I did not get that.
The Witness: Edward Zersen.
Mr. Block: Edward Zersen.
The Witness: Yes, sir.

Q. (By Mr. Block.) Where do you live?
2222 A. Mundelein, Illinois.
Q. That is in Lake County, is it?
A. Yes, sir.
Q. Mr. Zersen, in February of 1937, what was your employment?
A. With the sheriff's office of Lake County.
Q. As a deputy sheriff?
A. Yes, sir.
Q. Are you a deputy sheriff now?
A. Yes, sir.
Q. And you have been for some time?
A. Yes, sir.
Q. That is right, is it?
A. Right.
Q. Did you have occasion to visit the grounds or buildings of the Fansteel Metallurgical Corporation during the period February the 17th to February 26th, 1937?
A. Yes, sir.
Q. Did you see any men in those buildings?
A. Yes, sir.
Q. Were you around there frequently or infrequently during that period of time?
A. All the time.
Q. Mr. Zersen, were you present on the occasion when the sheriff and his deputies attempted to evict the persons
2223 from those buildings, that is, buildings 3 and 5?
A. I was.
Q. During the time that the sheriff and his deputies were making that effort, on the 19th of February—or, first, let me ask: the first attempt was on the 19th of February, was it?
A. Yes, sir.
Q. On that occasion did you see anything thrown, or coming out of the buildings, 3 or 5, on that occasion?
A. Well, I was at the south end of building No. 3, on the south side of building No. 3.
Q. Yes. So that you would know only about which building, then?
A. No. 3.
Q. What, then, if anything do you know about what was thrown or came out of that building?
A. Well, machine stuff, bolts and nuts, and wheels, and some acid in bottles.

Q. All right. Now, do you see any objects of that kind on the table before you here?

A. Yes, sir, that is some of the stuff, some of the things that were thrown out.

Q. The wire drawing spool that is before you here, known as Respondent's Exhibit No. 10—

A. Yes, sir.

2224 Q —did you see that, or similar spools, come out of the buildings at that time?

A. Yes, sir, I saw a number of those.

Q. Where did that come from; the first floor, the second floor, out of a door or window, or what?

A. From windows on the top floor—on the second floor.

Q. And where were you and the sheriff,—that is, by "you" I mean the deputies, all of the deputies and the sheriff— with reference to that building?

A. Well, we was about—oh, I would say about 50 feet south of the building.

Q. Were there many such articles thrown out, or not?

A. Yes, sir, there was an awful lot.

Q. Through the windows?

A. Through the windows.

Q. In what direction?

A. South.

Q. South.

A. Yes, sir.

Q. And where were you with reference to the building, did you say?

A. I was south of the building, about 50 feet away from the building.

Q. Now, how about the acid.

2225 A. That acid was thrown out of the building, also, out of the windows.

Q. Did any of that acid which came out of that building, strike you yourself?

A. Yes, sir, it did.

Q. Or any part of your clothing?

A. Yes, it did.

Q. Where?

A. My coat, and also my face and eyes.

Q. Was that from the splashing of the acid?

A. It was from a bottle thrown out of a window.

Q. That hit the ground?

A. When the bottle hit the ground, it broke.
Q. When it hit the ground.
A. Yes.
Q. And then splashed up?
A. Yes.
Q. And some of it went on you?
A. That is right.
Q. Did you see anything at all that was going on at the other building,—I mean so far as missiles were concerned?
A. I did on the second attack, yes.
Q. On the second attack?
A. Yes.
Q. What did you see on that occasion?
A. Bolts, and all that, coming down out of the north-
2226 west corner of the building. I was stationed at that corner for a while, and the same amount of stuff—or rather, not the same amount of stuff, but the same kind of stuff came out of those windows, that came out of the other ones.
Q. Where did it come from?
A. From the second floor.
Q. Of that building?
A. Yes, sir.
Mr. Block: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) Did you have one of the gas guns at that time?
A. No, I didn't.
Q. You were armed, I suppose, with your side arm.
A. Yes, sir.
Q. Did you have any stick or ball bat?
A. No, sir.
Q. Were you in uniform?
A. Yes, sir.
Q. I presume you saw gas being thrown into the building by the men in charge of that particular work, did you?
A. Yes, sir.
Q. How many men were in charge of putting gas into the building, or into the buildings?
A. Oh, I couldn't say just how many.
2227 Q. Were there a number?
A. There was, yes, sir.

Q. And in what manner did they put the gas in; how did they put the gas into the buildings?

A. Well, some of it was in hand grenades, and some of it was shot in by gun.

Q. You are referring to the 17th, now, are you?

A. No.

Mr. Swiren: The 19th.

Q. (By Mr. Walsh.) The 19th.

A. Yes.

Q. The first attack.

A. Yes, sir. That was with the hand bombs, and also a few of the guns.

Q. I see. And those were thrown through the windows, were they?

A. What is that?

Q. I say, were they thrown thrown through the windows?

A. Yes, sir.

Q. Did the gas bombs or missiles, break the windows that they went through?

A. Well, most of the windows were broke at that time.

Q. Most of the windows were already broken?

A. Yes, sir.

Q. That is your recollection, is it?

A. Yes, sir.

2228 Q. For about how long a time did the gas attack last?

A. Oh, I couldn't definitely state that.

Q. Approximately?

A. I imagine about an hour or so.

Q. About an hour or so?

A. Yes, sir.

Q. Do you know how much gas was used?

A. No, I don't.

Q. You do not know the number of projectiles, or hand grenades, that went into the building, do you?

A. No, sir.

Q. Did you see any gas bombs break any of the windows?

A. Yes, I believe I did.

Q. You did?

A. I believe so.

Q. Do you know how many it was?

A. No, I don't.

Q. You could not tell us that?

A. No.

Q. At that time did they use the automatic gas guns—
A. No.
Q. —as well as the hand grenades?
A. No, sir.
Q. That was on the second attack, was it?
A. Yes, sir.
2229 Q. On the occasion of the second attack, they shot the projectiles into the building with guns; is that right?
A. Yes, sir.
Mr. Walsh: That is all.
Mr. Block: That is all.
Mr. Walsh: Oh, pardon me; there is just another question or two, if the Examiner please.
Q. (By Mr. Walsh.) I take it you were treated for the burns which you say you received, sheriff?
A. Yes, sir.
Q. Who treated you?
A. Dr. Budde, of North Chicago.
Q. (By Mr. Block.) Who?
A. Dr. Budde, of North Chicago.
Mr. Swiren: Treated him for acid burns.
Q. (By Mr. Block.) Mr. Zersen, do you know whether—oh, pardon me. Were you through?
Mr. Walsh: That is all right. Go ahead.
Mr. Block: No, you go ahead. I thought you were through. I did not mean to interrupt.
Mr. Walsh: I was just thinking of something to ask him.
Mr. Block: Take your time. I was looking at something here and I thought you were through.
Q. (By Mr. Walsh.) Sheriff, did you see the bottle come out of the window, that contained the acid which you
2230 say struck you?
A. No, sir, I didn't see it come out, or I wouldn't have been standing there.
Q. Well now, were there any—I will withdraw that.
A. Pardon me?
Mr. Walsh: That is all.
Mr. Block: Are you through?
Mr. Walsh: That is all.
Mr. Block: Just a question or two.

Redirect Examination.

Q. (By Mr. Block.) Mr. Zersen, do you happen to know whether it is a fact that after the first gas shell was thrown into the building, the men started to break all of the windows in the building?

A. Well—

Q. If you do not know, just say so, but if you do know, I want to check up something here that has been talked about.

The Witness: Will you repeat that?

Mr. Block: Pardon me?

The Witness: Will you ask the question again.

Trial Examiner Dudley: The reporter will read it.

(The question was read.)

Q. (By Mr. Block.) (Continuing.) Is that how the windows happened to be broken?

A. Well, most of those windows were broken before 2231 the gas was throwed in there.

Q. I see. Well, how did they happen to be broken?

A. Well, because of these here wheels, and bolts and nuts, that was throwed through the windows.

Q. And then afterwards, were any of the windows barricaded?

A. There were some, yes, sir.

Mr. Block: That is all.

The Witness: Is that all with me?

Mr. Walsh: Just a moment further, please.

Recross Examination.

Q. (By Mr. Walsh.) I believe that some of those gas hand grenades were thrown back out, were they not, by the men?

A. Yes, sir.

Q. Did you see that?

A. I saw a few.

Q. And the gas became pretty thick on the outside there, did it not?

A. Well, not the first time, no, sir.

Q. Not the first time?

A. No.

Q. That is, some of them did not get into the building, even, did they?

A. Some of the shells?

Q. Yes, some that were thrown in by the sheriff's forces?

A. Oh, no; I believe that there was a few of them
2232 that missed.

Q. And the gas came back on you men, did it not?

A. Yes, sir.

Q. That is, the sheriff and his men?

A. Yes, sir.

Q. Then it is your recollection that the men hurled bolts, nuts, wheels and other things, out of the windows, before the sheriff actually attacked the building; is that right?

A. Well, it was both.

Q. How?

A. There was some of the windows broken before, but most of them were broken after the gas was put in.

Q. I believe there has been some testimony here to the effect that some of the windows were broken to permit the gas to escape.

A. No doubt there was.

Q. From the far side of the building.

A. Absolutely.

Q. But do you recall whether the bolts, and missiles, and others things that came out of the building, came out before the sheriff attempted to get in, or not?

A. On this particular building, No. 3 where I was standing—I don't know about the others—those were taken and throwed out of there before the gas was put in.

Q. Before the gas was put in?

2233 A. Yes, sir, in No. 3.

Q. I see.

A. I was standing out there.

Q. Well, if there had been gas put into the other side of building 3, you would not have known that, would you?

A. Well, no, I wouldn't.

Q. That is, I mean—

A. Not outside of hearing the glass breaking on that side, that is.

Q. Well, you do not know whether the windows were broken out on your side of building No. 3, in order to let the gas escape that had been put in from the other side of the building, do you?

A. No, I wouldn't.

Q. You would not know that?

A. No, sir.

Q. But you say that the missiles came out of the windows before you fellows on that side of the building, started putting the gas in; is that right?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Swiren: Just a moment. Was there an answer to that last question?

The Witness: I said: Yes.

Mr. Block: Just another question, please.

2234 *Redirect Examination.*

Q. (By Mr. Block.) Sheriff, you say you were struck by some of the acid that was thrown?

A. Yes, sir.

Q. Do you know any other deputies, or anybody else who was on the premises there, who was also struck by any of the acid?

A. Yes, sir.

Q. Or splashed with acid?

A. Yes, sir—well, not from this particular splash that I received, no.

Q. No, not from that particular splash.

A. No.

Q. But struck by any acid that came out of the building.

A. Yes, sir.

Q. On either of those occasions.

A. Yes, sir.

Q. Can you name any of them for the record?

A. Robert Webb.

Q. Robert Webb?

A. Yes.

Q. Who is Robert Webb?

A. Robert Webb is another deputy sheriff, employed by the sheriff.

Q. At that time?

2235 A. Yes, sir.

Q. And he was there for what purpose?

A. Well, to guard the buildings, the same as we were.

Q. He was there in the capacity of a deputy sheriff?

A. Yes, sir.

Q. Who else?

A. Frank Kazlausky.

Q. Frank Kazlausky.
A. Yes, sir.
Q. Was he a deputy sheriff at that time?
A. Yes, sir.
Q. Anybody else?
A. Well, that is all I can recall of.
Q. Do you know whether—how about Donald Dwyer?
A. Oh, yes, Donald Dwyer.
Q. Was he one of the men who were also struck by acid?
A. Yes, sir.
Q. And he was a deputy sheriff there at that time, is that correct?
A. Yes, sir.
2236 Q. Now, were any of the men, were any of the deputy sheriffs struck by any of these missiles that came out of the windows?
A. Yes, sir, there was one; John Froelich.
Q. John Froelich?
A. Yes, sir.
Q. A deputy sheriff?
A. Yes, sir.
Q. And he was struck on the occasion of February 26th, was he?
A. Yes, sir.
Q. Was he injured, or not?
A. Well, he was struck on the side of the head.
Q. Was he taken to a doctor?
A. Yes, sir.
Q. And received medical attention immediately; is that right?
A. Yes, sir.
Q. Where did that come from, that missile that hit him, if you know?
A. It came from building 3.
Mr. Block: That is all.
The Witness: Is that all with me?
Mr. Block: I think Mr. Walsh may have something.
Mr. Walsh: No.
The Witness: Is that all, your Honor?
2237 Trial Examiner Dudley: That is all.
(Witness excused.)
Mr. Block: Frank Valenta.

FRANK VALENTA called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Block.) You may state your full name, please.
A. Frank Valenta.
Q. Where do you live?
A. Ingleside, Illinois.
Q. Is that in Lake County?
A. Yes, sir.
Q. How long have you lived in Lake County, Illinois, Mr. Valenta?
A. About 15 years.
Q. In February of 1937 were you connected with the office of the sheriff of Lake County, Illinois?
A. I was.
Q. In what capacity?
A. Deputy sheriff.
Q. How long have you been a deputy sheriff in this county, at different times?
A. Oh, over a period of close to seven years now.
Q. Did you have occasion to go to the Fansteel buildings, or the plant, during the period from February the 17th
2238 to February the 26th, 1937?
A. I did.
Q. Were you there on the occasion of February the 19th when the sheriff and his deputies were attempting to enter the buildings?
A. I was.
Q. On that occasion, did you see anything come out of buildings 3 and 5?
A. Yes, I did.
Q. Will you describe to the Trial Examiner what you saw, and where it came from?
A. Well, there was different pieces of metal, aluminum wheels, and drills, reamers, bolts, and a couple of end wrenches, that come out of several windows of both buildings; and also bottles of acid, two bottles of rate metals; and fire crackers.
Q. (By Mr. Walsh.) What was that last?
A. Pardon me?

Q. What was that last?
A. Firecrackers.
Q. Firecrackers?
A. Yes, sir.
Q. (By Mr. Block.) Mr. Valenta, did you see the throwing of the tantalum, or the rare metals there yourself?
A. Yes, sir, I did.
2239 Q. What kind of a container were they in?
A. They were in bottles.
Q. In bottles?
A. Yes, sir.
Q. What building did they come from?
A. Building 3.
Q. Did you hear anybody in the buildings, any of the men in the buildings, say anything at the time that was thrown?
A. Yes, sir, the man that threw one bottle of rare metal hollered, "Look out! Here is"—or, he says, "here is a thousand dollars' worth of rare metals" or "here goes a thousand dollars' worth of rare metals."
Q. "Here goes a thousand dollars' worth of rare metals"?
A. Yes, sir, and with that he threw it.
Q. Where did that come from?
A. Well, that was about the third window from the east end of building 5, on the south side of the building.
Q. On which occasion?
A. That was on the first occasion, the first time, which was on February the 19th.
Q. February 19th, that was.
A. Yes, sir.
Q. Were any of the men struck by the acid, or the missiles which you have described?
A. Yes, sir, there were several of the men struck.
2240 Q. Several of the deputy sheriffs?
A. Yes, sir, including myself.
Q. Including yourself.
A. Yes, sir.
Q. Mr. Valenta, were any of the buildings,—or rather, were any of the windows in buildings 3 and 5, broken?
A. Yes, sir.
Q. Can you tell us how those windows happened to be broken?
A. On the morning of the 19th, when we attempted to gain entrance to building 6, which is immediately—

Q. Back?

A. —back, west of building 5, we broke a door in, in this building six.

Q. Was the door barricaded on the inside?

A. The door was barricaded from the inside, yes, sir, and it was necessary to take and smash the door down; and as soon as we got a hole smashed through the door, why, this Foamite started coming out. They had a tank of Foamite in there, used for fire protection, and this Foamite started coming through the door; they were shooting it through the door at us. One of the deputies, Harry Quant, then threw a gas bomb in there, and immediately the gas bomb exploded, why, the window in building 5, on the top of the second floor, was broken out, that is, the casing of the window, or the frame, or whatever you call it; the sash was broken
2241 out; and with that simultaneously several windows were broken in building 5, and the same thing occurred over in building 3 when we went over there. In fact several of those windows were broken before we ever went over there, to try to gain entrance.

Q. Well, were those windows, then, broken from the inside, or from the outside?

A. They were all broken from the inside.

Q. By the way, Mr. Valenta, could you see at any time; could you actually see at any time, some of the men breaking the windows?

A. Yes, sir; yes, indeed. In fact, they used iron bars, and hammers—well, iron bars, hammers, and pieces of pipe, and whatever was handy, to break the glass out.

Q. You saw that, did you?

A. Yes, I did.

Q. That they were breaking them from the inside?

A. Yes, sir.

Q. And these various pools and different articles which you have described, that you saw thrown; they came from the inside of the building, did they?

A. They came from the inside of the building, yes, sir.

Q. Mr. Valenta, were you in regulation uniform at that time?

A. Yes, sir.

Q. You had a deputy sheriff's or police officer's uniform?

A. Yes, sir.

2242 Q. And were the others of your companions there, in the same type of uniform?

A. Yes, sir.
Q. Was it daylight on that occasion?
A. Yes, sir, it was daylight on that occasion.
Q. On February the 19th.
A. Yes, sir, it was.
Q. I presume you heard some conversation between the men in the buildings, and those on the outside, did you?
A. Why, I wouldn't exactly call it conversation; they were cussing us out, and calling us all kinds of names; using profane language, and everything.
Q. And this was on the occasion when the sheriff and his deputy sheriffs, at the direction of the sheriff, were attempting to evict those men from those particular buildings; is that right?
A. Yes, sir.
Mr. Block: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) Are you married, Mr. Valenta?
A. I am.
Q. Do you have a daughter?
A. I have.
Q. Is her name Betty?
A. Yes, sir.
2243 Q. Does she work for Fansteel?
A. She does.
Q. Has she ever talked to you about this matter?
A. No.
Q. She has not?
A. No.
Q. When did she start to work there?
A. Why, I asked to get her a job there.
Q. After the trouble was over?
A. Yes, sir, after the trouble was over.
Q. What does she do down there?
A. Why, I really don't know just what she does. She grinds face, a face grinder, is what she is there, although I don't know exactly what she does.
Q. You do not know whose face she grinds?
A. I don't know whose face she grinds, or what she grinds, no, sir.
Q. Well, I expect she probably works in the contact department, grinding faces, does she not?

A. It is in the contact department, yes, sir; that is where she works. But I couldn't answer exactly as to what she is doing, because I never went down there to see what she was doing.

Q. I see. I believe she became secretary of the rare 2244 metal works union there, did she not?

A. Well, not to my knowledge, no, sir. There was a discussion about that, and it seems this secretary thing was just a temporary matter.

Q. Oh, is that right?

A. Yes, sir. As I understand it from her, there is some other gentleman who is secretary.

Mr. Block: If the Examiner please, may we interpose an objection to this line of examination? I think counsel is getting into a field of speculation here.

Mr. Walsh: Well, now—

Mr. Block: And furthermore, it is not strictly cross-examination, or even closely so.

Mr. Walsh: Well, I think the witness wants to state the facts.

Mr. Block: I thought perhaps you wanted to follow the same procedure with this witness, that we did with some of the others. If you want to go into another field, why not do the same with this witness that was done before?

Mr. Walsh: Well, I do not want to interrupt your orderly procedure; I do not want to do that, of course. I thought perhaps a few questions along this line would not be objectionable, and I thought that the witness might not want to come back.

Mr. Block: If you can just as well recall him for 2244 that purpose, we will ask you to do that.

Mr. Walsh: All right.

Q. (By Mr. Walsh.) Now, Mr. Valenta, I believe you stated that after you broke down the door in building 6, and threw a bomb in there, the boys had a Foamite machine there, squirting at you through the door?

A. Yes, sir.

Q. And that immediately upon the bomb exploding, or upon the explosion of the bomb, the window was broken,—or a window was broken out in building 5?

A. A window was broken out in building 5, on the second floor, directly opposite us.

Q. I see.

A. That is, facing us. It was almost in a direct line, al-

though it was on the second floor, with this door which was being broken down.

Q. I see. That is, going right on through into the building, this window which was broken out, in building 5, would have been right above?

A. Yes, sir, and right through that window they were starting to shoot some more with a hose,—and doing something else—I don't know what that stuff was.

Q. Which is the door that was broken down there? Is this it? (Indicating.)

A. Well, let me see a minute.

2246 Q. As shown in the picture here?

A. It shows the—well, now, I don't know whether it is this door or not. I imagine it is, though, yes. No, I think it is this other door here.

Mr. Walsh: Indicating the door at the extreme left side of the picture, in building 6.

The Witness: Yes, I think so; and here (indicating) is the window that was broken out, this window right here.

Q. (By Mr. Walsh.) Indicating the window appearing on the second floor—

A. Yes.

Q. On the extreme right of building 5?

A. Yes.

Q. As you face the picture.

A. That is right.

Mr. Swiren: That is exhibit 8, is it not?

Mr. Walsh: Exhibit 8.

The Witness: Yes.

Q. (By Mr. Walsh.) I believe that is covered over with some substance now, is it not?

A. That is covered with some wallboard, or something, yes.

Q. I see.

A. It is nailed up, or something of the sort.

Q. Did missiles come out of that building, prior to the explosion of the bomb?

2247 A. Prior to the explosion of the bomb, yes, sir.

Q. There were?

A. Oh, yes.

Q. Do you recall, Sheriff, how many gas bombs, or grenades, or whatever you call them, were used in the attack of February the 19th?

A. Well, I couldn't recall exactly, no, sir. I have no idea

how many there were. However, it wasn't very many, because we didn't have such a large supply at the office.

Q. Just approximately?

A. Well, offhanded, I would say that we had possibly 30.

Q. Approximately 30?

A. Yes, sir, 30 gas bombs.

Q. And it is your recollection that that was all, is it?

A. Yes, sir, and a lot of them were duds, too. As a matter of fact—

Q. And were they thrown in through the windows of the plant?

A. Yes.

Q. Did they break the windows?

A. Why, it wasn't necessary to break the windows, because they had already been broken.

Q. They had broken the windows, first?

A. Yes, sir.

Q. It is your recollection that they broke the windows first, is that right?

2248 A. Yes, sir.

Q. And then all you did was to throw the bombs in, after they broke them?

A. Yes, sure. Of course, there may have been one or two windows broken, too, due to some of these other—due to somebody's poor aim in throwing those things, but, of course, dodging the missiles at the same time you are trying to throw a bomb in there, why, you might probably break a window; but most of the windows were busted from the inside.

Q. I see. What time of the day did this happen?

A. Well—

Q. That is, this first gas attack?

A. I don't know exactly what time of the day that was. It was daylight, anyhow; it was broad daylight.

Q. In the morning, was it?

A. Yes, sir.

Q. Now, this man who said, "Here goes a thousand dollars worth of rare metals" and threw something: did you see that come out?

A. Yes, sir, I did. I was standing directly opposite here. In fact, I don't know what was in the bottle. The metal was pouring out, and I thought it was some kind of high-pressure acid, or something, and I commenced to move back.

Q. And then did you later discover what it was that came out of the bottle?

2250 A. Yes, I did.

Q. What was it?

A. Why, it was tungsten; that is what one of the other deputies told me, Mr. Aitchison, who had permanently been employed at the Fansteel Company some years ago.

Q. I see.

A. He just happened to be acquainted with the contents of it, points, or whatever they were.

Q. Was that in the form of powder?

A. No, no, it was like small disks.

Mr. Walsh: I see. That is all.

Mr. Block: That is all.

Trial Examiner Delaney: You are excused.

(Witness excused.)

Mr. Keele: If the Examiner please, may I inquire at this time, how late the Board is going to work this evening? We have a witness at the Court House, and we do not want to call him unless we can finish with him?

Trial Examiner Dudley: I think we can work for awhile yet.

Mr. Block: May we have a short recess at this time, then?

Trial Examiner Dudley: Certainly, I will announce a short recess.

(A short recess was taken.)

2250 Trial Examiner Dudley: The hearing will reconvene. Are you ready to proceed, counsel?

Mr. Keele: Albert Groll.

ALBERT GROLL, called as a witness for the respondent, having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) You may state your full name?

A. Albert Groll.

Trial Examiner Dudley: Albert Groll?

The Witness: Yes, sir.

Mr. Walsh: If the Examiner please, may I make the same arrangement, as to these witnesses, that I will confine my cross-examination to the examination in chief and recall them later, if I desire to do so?

Mr. Block: If you want them, you may recall them.

Q. (By Mr. Keele.) What is your address?

A. 907 West Moreland, Waukegan, Illinois.
Q. You are employed by the Fansteel Company?
A. Yes, sir.
Q. And have been for sometime?
A. Seven months past.
Q. During that time you have been a foreman in the Tool Department, is that correct, is that correct?
A. Yes, sir.
Q. You were there at the plant on February 17th, 1937, were you?
2251 A. Yes, sir.
Q. Directing your attention to the hour of about 2:00 o'clock or 2:30 o'clock in the afternoon of that day, will you tell us what occurred in the Tool Room that you know of, of your own knowledge?
A. I was down in building 6, just about 2:30, and one of the boys came up and says, "You had better go up to your department." I went up into the department, and the power was shut off, and everybody was sitting down. I asked them what was the matter, and they all sat there and laughed at me.

Mr. Swanson come up and told me that I would have to get out, and he says, "You might as well get out peaceably." So I put on my hat and coat and went downstairs, and stood out there in the back, on the west side of building 3.

Q. Did you have any other conversation with anyone up there in the tool room at that time?
A. Pardon me?
Q. Did you have any other conversation with anybody else up in the tool room there at that time?
A. No, that is all that was said.
Q. I see.
A. He just says, "You might as well get out peaceably."
Q. How is that?
A. He told me—he says, "You will have to go out, so you might as well get out peaceably." I says, "Why, sure,
2252 I won't start any trouble with you."
Q. What did Carl Swanson do then?
A. He stood there and waited until I got out, and when I went out, he followed me down through the Contact Department.
Q. And then what?
A. And then he went back there talking to Mr. Chiswell, and I stood there for a few moments, and when he came down there, he had a lot of pipe in his hands.

Q. Yes.

A. And what was going on inside, after I went out, I don't know.

Q. What did he say, or do, when he came down with the pipe in his hands?

A. He didn't say anything to me.

Mr. Keele: That is all.

Mr. Walsh: No cross-examination.

Mr. Keele: That is all, Mr. Groll.

(Witness excused.)

Mr. Keele: Chester Hook.

CHESTER HOOK, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) State your full name, please?

A. Chester Hook.

Q. Where do you live, Chester?

2253 A. What?

Q. Where do you live?

A. 417 Fourth, Waukegan.

Trial Examiner Dudley: What address?

The Witness: 417 Fourth, Waukegan.

Q. (By Mr. Keele.) You are employed by the Fansteel Company?

A. Yes, sir.

Q. How long have you been employed there?

A. About two years and three months.

Q. Were you at the plant of the Fansteel Company on the afternoon of February the 17th, 1937?

A. I was.

Q. Tell us just briefly what—let me withdraw that question.

Were you one of the men who seized the plant, and held it?

A. Yes, sir.

Q. From February 17th to February 26th?

A. Yes, sir.

Q. You went in with the men when they went in on February 17th, about 2:00 o'clock, or 2:30 o'clock in the afternoon, is that correct?

A. Yes, sir.
Q. What building were you in?
A. Well, at 2:30 I was out in the Chemical Build-
2254 ing,—I don't know what number it is; the Wood building.
Q. And what happened then?
A. Well—
Q. Just tell us briefly.
A. Well, I was told to go up into the tool room, and I did not ask why; I just went; and when I got there the power was shut off, and they told us—they told me to stick around.
Q. All right. Who told you that?
A. Why, I don't know who it was. They was all standing around there.
Q. All right. Now, then, I believe you went from Building 3 to Building 5, did you?
A. Yes, sir.
Q. And then back to Building 3?
A. Yes, sir.
Q. How did that happen?
A. Why, I left Building 3.
Q. Yes. Just go ahead and tell us about it, briefly.
A. I went to get my jacket, and I went over to building 5, and I stayed.
Q. All right. Did anybody escort you when you went from one building to the other?
A. Yes.
Q. Who was it?
A. I don't know; I forget.
2255 Q. Do you not recall who it was?
A. I forget.
Q. All right.
A. It was a couple of them.
Q. Was anything said to you, as to why they were escorting you there?
A. No.
Q. All right. Now, then, you were there on the morning of the 19th of February, were you not, when the sheriff came there?
A. Yes, sir.
Q. And attempted to gain entrance?
A. Yes, sir.
Q. You were then in building 5?
A. Yes, sir.

Q. And building 6, which adjoins building 5; is that correct?

A. Yes, sir.

Q. Tell us what happened there at that time?

A. That was at the gas attack?

Q. Yes.

A. Well, that was pretty dark at the time, and there were about a hundred deputies out there in back, and they got a battering ram down and started to break the door down.

Well, there was a Foamite gun there, so Bill Warner
2256 and I got that going, and we squirted it; we turned on the nozzle, and we squirted the deputies, and then they knocked the door in.

Q. By "Bill Warner" you mean Charles Warner, do you not?

A. Yes, sir.

Q. And what did you do then? How long did you continue to squirt Foamite through the door at the deputies?

A. Oh, it couldn't have been more than about three minutes until the Foamite went down.

Q. You mean, when the tank was exhausted?

A. Yes, sir.

Q. That was about a 40-gallon tank on wheels, is that correct?

A. Yes, sir.

Q. In building 6?

A. Yes, sir.

Q. Then, what did you do?

A. We run up to the second floor, and when we got to the second floor, a bomb came in and we left and went the third floor, and stayed there.

Q. All right. Now, when the gas came into the building, the men smashed out a lot of windows, did they not?

A. Yes, sir.

Q. With iron pipes, or hammers, or whatever they could get hold of?

A. Yes.

2257 Q. They just ran along and smashed the windows out; that is correct, is it not?

A. Yes, sir.

Q. That is, the men in the building?

A. Yes, sir.

Q. All right. Was anything thrown out of the buildings at that time?

A. Well, I guess there was.

Q. Were there a number of the men, a small number, only one or two men, doing that, or were they all pretty well engaged in doing it?

A. All of them. I was pretty busy myself. I believe everybody threw something out, although I couldn't tell very well.

Q. You threw somethings yourself, did you not?

A. Yes, sir.

Q. What did the men throw? What were they throwing out of the windows?

A. Well, I couldn't just say, but I noticed on the ground the next morning there was spools down there, and one thing another; stuff laying around.

Q. Tools?

A. No, not from that building.

Q. Not from that building.

A. No.

2258 Q. Were there any pieces of iron, pieces of scrap, or anything like that?

A. Well, the spools are made of iron, I guess.

Q. Those are the spools, the spools that you refer to, are made of metal?

A. Yes.

Q. And are approximately 5 or 6 inches across, in diameter, are they?

A. Yes, sir.

2259 Q. And weigh probably a pound and a half, or two pounds apiece?

A. Yes, sir.

Q. Now, you left the building at the end of about five days, did you not?

A. Yes, sir.

Q. Or around February the 22nd?

A. Yes.

Q. So you were not there at the time of the second attack, the time the second attack was made on February the 26th, were you?

A. No, sir.

Q. Were the doors locked or barricaded from within, during the time that you were in the buildings?

A. Yes, sir.

Q. How were they locked or barricaded?

A. Well, the large door in building 6 had—it is a sliding door, and it had a bar there, with a two-by-four behind it; and the small door in building 6 had a couple of planks nailed across it; and the rest were just—they were all about the same, just so that they couldn't be opened.

Q. You knew that the sheriff was trying to get you out, did you not?

A. Yes, sir.

Q. Out of the buildings.

2260 A. Yes, sir.

Q. The men all knew that, did they not?

A. Yes, sir.

Q. They discussed it, did they not?

A. Yes.

Q. And did the men in there know anything about the injunction that had been issued on the 18th?

A. Yes.

Mr. Walsh: Just a moment. That is objected to, unless the proper foundation for it be laid.

Q. (By Mr. Keele.) Well, was there any—

Trial Examiner Dudley: Oh, I will overrule the objection, to save time.

Q. (By Mr. Keele.) Was there any discussion among the men there, as to whether or not an injunction had been issued, and if so, what it provided?

A. Well, they all understood it, and they said, "We're going to stick."

Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) How old are you, Chester?

A. 20.

Q. What is your job over there?

A. Well, sort of a machinist, and welder, doing maintenance work.

2261 Q. Were you working in any particular department?

A. Am I?

Q. Were you then?

A. Yes, in the tool room.

Q. In the tool room?

A. But I wasn't in the tool room at the time.

Q. You were over doing a job in the Chemical Building, is that correct?

A. Yes, sir.
Q. When this trouble broke out.
A. Yes, sir.
Q. You have since gone back to work, have you, Chester?
A. I have.
Q. What wages did you draw before the trouble broke out?
A. Before the time of the strike?
Q. Yes.
A. 55 cents per hour.
Q. 55 cents per hour.
A. Yes, sir.
Q. That was before the strike.
A. Yes, sir.
Q. How much are you getting now?
A. 65.
Q. So that you have had a 10 cent raise since that time; is that correct?
2262 A. Well, no, sir. I was making 60 cents an hour, at the time.
Q. You have had a 5 cent raise, since that time, then, is that correct?
A. Yes, sir. I have gotten a raise every six months.
Q. Now, you and Bill Warner took care of the Foamite gun; is that right?
A. Yes, sir.
Q. I suppose it was pretty exciting around there at that time, was it not?
A. Where we were?
Q. Yes.
A. Oh, there was just the two of us there.
Q. Just the two of you.
A. Yes, sir.
Q. After the door had been broken down, and the tank ran out, what did you do then?
A. We left for the second floor.
Q. Left for the second floor.
A. Yes, sir.
Q. And when you got up there on the second floor, were there any windows broken out?
A. No, sir, just the one that the bomb came through.
Q. Just the one that the bomb came through?
A. Yes, sir, and then we left right away, because
2263 we didn't know what tear gas was, and we didn't want to play around with it.

Q. You did not want to play around there?
A. No, sir.
Q. So you went up to the third floor; is that right?
A. Yes, sir.
Q. And then when you got up to the third floor, were there any windows broken out there?
A. I don't know if there was at the time or not.
Q. Now, after they had thrown in a lot of gas, the fellows broke the windows out, to air the place out, did they not?
A. Yes.
Q. Or to get the gas out?
A. Yes.
Q. And that is when they went along, as you told Mr. Keele, with iron bars, and things, and broke the windows out; is that right?
A. Yes, sir.
Q. Now, how about the—did you help in throwing things out of the windows yourself?
A. Yes, sir, I did; I threw four lead nuts.
Q. Four lead nuts.
A. Yes, sir, about an inch in diameter.
Q. Were the windows from which you threw those four lead nuts, broken out, before you threw them?
2264 A. No.
Q. You threw them through the whole window, is that right?
A. Yes, sir.
Q. And whom did you throw them at?
A. Well, I couldn't say anybody in particular. I couldn't even say—I don't know if they went through the window or not, but I think they did.
Q. And for what purpose did you throw them?
A. Well, I wanted—I wouldn't say, for any certain reason. I don't know; just to do something.
Q. You did not aim them; you did not aim the nuts, the lead nuts, to hit the deputies, did you?
A. Well, I don't know if that was my idea at the time or not. We were in there, and—
Q. And you wanted air, did you?
A. Yes, sir.
Q. So in order to get air, you threw the nuts out of the window; is that right?
A. Yes, sir.

Q. So your purpose in throwing the nuts, was not to hit a deputy, so much as it was to break the windows, so that you could get air, was it not?

A. Well, I didn't want to hit anybody, but—well, I didn't think about if I wanted to hit them or not.

Q. You mean, you did not intend to hit anybody?

2265 A. Well—

Q. You wanted air?

A. It wasn't my purpose exactly, but I don't know at the time if I cared about hitting them or not, to tell you the truth.

Q. You did not like them very well; is that right?

A. Well, no, but I was in there—

Q. You were not a defendant in the contempt proceeding, were you?

A. How is that?

Q. You were not a defendant with the rest of the boys over here in court, were you?

A. I was over there.

Mr. Swiren: I think he was.

Q. (By Mr. Walsh.) You were up there?

A. Yes, sir.

Q. You have not been sentenced, or anything, have you?

A. No, sir.

Q. And you are working for the company now.

A. Yes, sir.

Q. When did you go back to work?

A. I went back the Thursday following the day of the opening I don't know what date it was.

Q. On the Thursday following the date of the opening?

A. Yes, sir.

2266 Q. Did you get paid for any of the time while you were staying in the plant?

A. Yes, sir; I believe they all did.

Q. How much did you draw for the time while you stayed in the plant?

A. Oh, I don't know.

Q. Oh, approximately.

A. 60 cents per hour, 8 hours per day.

Q. For how many days?

A. 40 hours a week.

Q. Then you did not lose any pay for the time that the plant was tied up, did you?

A. No, sir; just the—the only time I lost was after they opened the plant, and I didn't go back.

Q. On the Thursday following the plant reopening, is when you came back?

A. Yes, sir.

Q. Now, at the time the trouble broke out, you were a member of Lodge 66, were you not?

A. Yes, sir.

Q. And I suppose you never have resigned from Lodge 66, have you?

A. Well, I guess I have, because I went back to work.

Q. Well, I mean—

A. I guess so.

2267 Q. I mean, they have never sent you any notice of any kind, have they?

A. No, sir, but they did quit sending us the paper. We used to get that.

Q. Do you know whether the other members are getting that paper now or not?

A. I don't know.

Mr. Walsh: All right. That is all.

Mr. Keele: Just a moment, Mr. Hock. There are one or two further questions.

Redirect Examination.

Q. (By Mr. Keele) When you threw those nuts out of the window, did you throw them out to break the window so that you might get some air, or did you throw them out in an effort to keep the deputies away.

A. Well, as I told you before, I think at the time I wanted to do both.

Q. If you had wanted to break the windows, you could have picked up a hammer, or a piece of scrap, or something or other which was handy, could you not?

A. I did that, too; I threw other things.

Q. You did both?

A. Yes, sir.

Q. In other words, you found that the lead nuts were not very effective in assisting you to clear the air; is

2268 that right?

A. Yes, sir. They made too small a hole.

Q. And your real object was to keep the sheriff away, was it not?

A. Yes.

Q. Or to keep the deputies from coming in; that is right, is it not?

Mr. Walsh: That is objected to.

A. Yes.

Q. (By Mr. Keele) How?

A. I guess so.

Q. Who was in charge of that building?

A. Bill Warner.

Q. Who gave orders in there?

A. What orders were given, were given by Bill Warner.

Q. I see. Now, was there any discussion at the time the deputies came there, as to what should be done by the men; whether they should be kept out, or what; or did they say, "Now, throw, boys, but don't aim at the men" or anything like that?

A. Well, I guess everybody understood what to do, because we were all in the same boat, and didn't have very much time.

Q. Was there any discussion about it?

A. No, sir; it all happened very quick.

Q. Everybody just threw?

2269 A. I guess they did.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may step aside.

(Witness excused.)

Mr. Keele: Milton Sladek.

MILTON SLADEK, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele) Please state your full name.

A. Milton Sladek.

Q. Where do you live?

A. What is that?

Q. Where do you live?

A. 1923 Commonwealth Avenue, North Chicago, Illinois.

Q. You are employed by the Fansteel Company, are you?

A. Yes, sir.

Q. Are you working there at the present time?

A. Yes, sir.

Q. How long have you worked for them?
A. About two years.
Q. You were there on the day of February the 17th, 1937, were you?
A. I was.
Q. You were one of the men who seized and held
2270 buildings 3 and 5, were you not?
A. Yes, sir.
Q. You were in there the entire time, were you?
A. I was.
Q. Which building were you in; 5?
A. No. 5.
Q. Who was the boss in that building?
A. How is that?
Q. Who was in charge of that building?
A. Bill Warner.
Q. On the morning of the 19th of February, you were there when the deputies came down there with the sheriff, were you?
A. Yes, sir.
Q. And attempted to get into the buildings?
A. I was.
Q. Now, will you just go ahead and tell us what occurred there.
A. Well, we seen all of those deputies out there early in the morning, and they all had bats, or clubs; and they was trying to get in, so we tried to keep them out.
Q. What did you do, to try to keep them out?
A. Well, I squirted water at them.
Q. From a fire hose?
A. Yes, sir.
Q. Who was with you on that fire hose?
2271 A. Herman Latz, and Nate Mogel.
Q. All right. What were the other men doing?
A. Well, they were all standing up at the windows, at the time.
Q. Standing up where?
A. In the windows, watching them.
Q. Did anybody throw anything?
A. Well, I was kind of busy handling the fire hose at the time, but they was throwing; everybody was.
Q. How?
A. Everybody was throwing.
Q. Everybody was throwing.

A. Yes, sir.
Q. What were they throwing?
A. Well, spools—that is all that was thrown out of there, I guess.
Q. Where were they throwing those spools?
A. Out of the windows.
Q. Toward what direction?
A. West.
Q. That is where the deputies were, was it not?
A. Yes, sir.
Q. Is that right?
A. That is right.
Q. Did you throw anything out?
2272 A. Well, yes.
Q. Did you throw whatever you did throw out, to break the windows so as to get air, or did you throw it at the deputies, or in the direction of the deputies?
A. I guess I threw them at the deputies.
Q. Now, did you see any acid up in building 5, where you were?
A. There was some on the third floor.
Q. Where?
A. On the third floor.
Q. The third floor.
A. Yes, sir.
Q. Now, acid is ordinarily kept down on the first floor in that building, is it not?
A. In the stock room.
Q. In the stock room.
A. Yes, sir.
Q. Did you see any of that thrown out?
A. No, sir.
Q. You did not see any thrown?
A. No, sir.
Q. You saw it brought up there, did you not?
A. No, sir, I didn't. I know it was up there, but I never knew it was up there before. It stood on benches, and I took it and set it down off the benches.
2273 Q. How is that?
A. I say, it stood on benches, and I took it and set it down off the benches.
Q. You put it under the benches?
A. Yes, sir.

Q. Now, you were there again on the morning of the 26th of February—or you were still there on the morning of the 26th, I should say; is that correct?
A. Yes, sir.
Q. When the deputies came there again?
A. Yes, sir.
Q. And about the same thing was repeated?
A. Yes, sir.
Q. You threw things out of the windows?
A. Yes, sir.
Q. Was that pretty general?
A. Yes, sir.
Q. That is, almost everybody joined in that?
A. Yes, sir.
Q. Yourself included, I take it?
A. Well, I was—I guess I did, yes, sir.
Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh) Do you remember what you threw, Milton?
A. Well, spools; I threw two or three spools out the window.
2274 Q. At the time when the attack was made on the 19th of February, were there any windows broken before the gas came through?
A. I believe there was.
Q. I see. But you did do some breaking of windows, to let the air in, and let the gas out, is that correct?
A. Well, yes.
Q. Did you assist in the breaking of any of the windows?
A. What do you mean?
Q. Did you help break the windows?
A. I did.
Q. What did you use, to break them?
A. Well, I used spools, two or three spools.
Q. Two or three spools?
A. Yes, sir.
Q. Now, those windows are of ground glass, with wire in them, are they not?
A. No, sir.
Q. Can you see out of those windows normally?

A. Yes, sir.

Q. Are they high enough so that you can look out of them?

A. Yes, sir.

Q. The part that you threw—did you throw the spool through the part that you could look out of, or the top part?

A. Well, the whole thing.

2275 Q. Pardon me?

A. I took and pulled out a shutter down there.

Q. You pulled a shutter out?

A. Window and all.

Q. Window and all.

A. Yes, sir.

Q. So that you could let more air in; is that right?

A. Yes, sir.

Q. And let the gas out?

A. Yes, sir.

Q. Now, I suppose that by the 26th of February, the windows were pretty well out, were they not?

A. Yes, sir.

Q. Where were you at the time you had the fire hose, squirting at the deputies?

A. Over in the corner of the building.

Q. Over in the corner of the building.

A. Yes, sir.

Q. Were you at a stairway, or at a place where they could come up?

A. No, sir; it was on the first—or rather on the second floor, right in the corner of the building.

Q. Did you see anybody throw any acid out of the building?

A. No, I didn't.

Q. Do you know whether any was thrown out or not?

2276 A. No, I don't.

Q. All that you had to do with the acid was, to put it under the workbench?

A. Well, I set it under there so that it would be out of the way. I didn't hit them, or anything.

Q. Pardon me?

A. I say, I set it under there so that it would be out of the way.

Q. You just set it back under there to keep it from being kicked over?

A. Yes, sir.

Q. And somebody get burned—is that right?
A. Yes, sir.
Mr. Walsh: That is all.
Mr. Keele: That is all.
Mr. Walsh: Oh, pardon me, there is another question.
Q. (By Mr. Walsh.) By the way, you are working for the company now, are you not, Milton?
A. Yes, sir.
Q. What wages are you getting now?
A. 55 cents per hour.
Q. What were you getting before?
A. 53.
Q. So that there is a difference of 2 cents in your wages at the present time; is that correct?
2277 A. Yes, sir.
Q. When did you go back to work?
A. Oh, I guess I went back about two weeks after they opened up, or in that neighborhood somewhere.
2278 Q. You were a member of Lodge 66 before the trouble broke out, were you not?
A. I was.
Q. You have not been notified by the Lodge as to whether you are no longer a member, have you?
A. No, sir.
Q. You do not know whether you are still a member or not; is that it?
A. Well, I take it for granted that when I went back to work I wasn't a member any more.
Q. You just assumed that they would not want you in the Lodge any more, when you went back to work; is that right?
A. Yes, sir.
Q. You returned about 2 weeks, you say, after the plant opened up?
A. That is right.
Q. Did you get paid for the time you stayed in the plant?
A. I did.
Q. How much did that amount to, if you know?
A. Oh,—
Q. Approximately.
A. About $25.
Q. And you stayed there from the 17th of February right on until the last gas attack, is that right?
A. Yes, sir.

2279 Q. On the 26th.
A. Yes, sir.
Mr. Walsh: That is all.
Mr. Keele: Just a moment.

Redirect Examination.

Q. (By Mr. Keele.) That raise that you got after you went back to work amounts to about 80 cents per week, does it not?
A. Yes, sir.
Q. 40 hours at 2 cents per hour.
A. Yes.
Q. That is correct, is it not?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: Nothing further.
Trial Examiner Dudley: You are excused. Thank you very much.
(Witness excused.)
Mr Keele: Send in your brother, will you?

ARTHUR SLADEK, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) State your name, please.
A. Arthur Sladek.
Q. You spell that S-l-a-d-e-k?
A. Yes, sir.
2280 Q. You are employed by the Fansteel Company?
A. Yes, sir.
Q. How long have you been employed by them?
A. Almost 4 years.
Q. Were you at the plant of the Fansteel Company on February 17th, 1937?
A. Yes, sir.
Q. Are you one of the men who seized and occupied building No. 3?
A. Yes, sir.
Q. You were there from February 17th until the morning of February 26th, were you not?
A. Yes, sir.
Q. Now, who gave the orders in building 3?

A. Carl Swanson.
Q. Did anybody else give any orders in that building?
A. Well, there was a few of the leaders in there.
Q. Who were they?
A. Frenchy, Kondrath—
Q. Frenchy DuBois?
A. Yes.
Q. Yes.
A. And Kondrath.
Q. John Kondrath?
A. Yes.
2281 Q. Was there anyone else?
A. Well, there was—I don't know—a number of them. There might have been more.
Q. You were there the morning, or the noon, that the sheriff came out with the writ, were you not?
A. Yes, sir.
Q. He read that writ to the men, did he not?
A. Yes, sir.
Q. Or to a number of the men?
A. Yes, sir.
Q. Through a window; is that correct?
A. Yes, sir.
Q. What was said about that afterward?
A. Well, they didn't say very much.
Q. Was anything said along the line of, "Well, boys, get set for a fight"?
A. Well, they didn't know that they was going to have a fight then.
Q. They did not?
A. No, sir.
Q. Well, did they make any preparations in there, to prevent their being surprised, at that time?
A. Not right then.
Q. Did they later post men around?
A. Yes, sir. I don't remember when they did post
2282 them, but they had them around there to guard. Everybody was taking turn.
Q. Now, the sheriff came there on the next day, on the 19th of February, did he not?
A. Yes, sir; in the morning.
Q. And made an effort to get into the buildings, did he not?
A. Yes, sir.
Q. What happened?

A. Well, they shot gas in there.
Q. All right. What did the men do?
A. Well,—
Q. Did the men do anything?
A. Yes, sir.
Q. What did they do?
A. They threw stuff out.
Q. All right. What did they throw—did you see anything coming out of building No. 5?
A. Yes, sir.
Q. What came out of there?
A. Oh, I seen a spool roll off the roof there.
Q. Now, what were they throwing from building No. 3, if anything?
A. Oh, I guess pieces of steel, or anything else that they could get their hands on.
Q. And was that indulged in by only a few of the
2283 men, or was the greater percentage of them throwing?
A. Three quarters of them, I would say.
Q. Pardon me?
A. Three quarters of them.
Q. About three quarters of them.
A. Yes, sir.
Q. Did you see Swanson, Kondrath, and DuBois throw anything there?
A. Yes, sir; they was all throwing things.
Q. How was that?
A. Everybody was throwing.
Q. Everybody was throwing.
A. Yes, sir.
Q. You saw acid up in the machine shop on the second floor that day, did you not?
A. Yes, sir.
Q. That acid is not normally kept there—
A. No.
Q. —during the normal operation of the plant, is it?
A. No, sir.
Q. It is kept in the stockroom?
A. Yes, sir.
Q. In building 5, is it not?
A. Yes, sir.
Q. How much acid did you see up there?
2284 A. Oh, there was a box or two. I don't know exactly. I think there is about 20 in a box.

Q. Are there 48 of those bottles in a box?
A. I don't know what there is. They were just piled in there.
Q. They just piled them in there?
A. Yes, sir.
Q. Who piled them in there?
A. Oh, I don't know who brought them up; whoever brought them up.
Q. Did you see them brought up?
A. No, I didn't. I seen it after it was there.
Q. You say you saw it after it had gotten there?
A. Yes, sir.
Q. It was handled, or brought up there, by some of the men who were in the building, however?
A. Yes.
Q. That is correct, is it not?
A. Yes, sir.
Q. Now, after the sheriff came there on the morning of the 19th, he talked to the men in the building again that morning I believe, did he not?
A. Yes, sir.
Q. And then did not Swanson, Carl Swanson, say, "Now, boys get ready for a fight", and post the men around?
2285 A. Yes, sir.
Q. And say, "If something starts, give it to them"?
A. Yes, sir. They was all around there, on the third floor, and the second floor.
Q. Well, tell us; just tell us about what happened there. Just go ahead, without my asking you questions.
A. We was all sleeping, and I don't know who it was, but somebody woke me up, and they woke everybody up, and sent us up in the machine shop; and we scattered out up there to get ready for a fight.
Q. What was said then? I mean, what did Swanson say? What did he say, if anything?
A. Oh, I don't remember; just, "When they start, give it to them."
Mr. Walsh: I did not get that.
Mr. Keele: "When they start, give it to them."
Mr. Walsh: May the answer be read, please, Mr. Reporter? I thought there was something else.
(The answer was read.)
Mr. Walsh: Pardon me.
Q. (By Mr. Keele.) What was he referring to, or what did he mean by "give it to them"?

A. To keep them away.
Q. To keep whom away?
A. Well, the deputies and the policemen.
2286 Q. Did he tell you what to do to keep them away?
A. Just throw stuff.
Q. And was stuff thrown after that?
A. How is that?
Q. When the deputies came and tried to get into the plant, was stuff thrown out by men in the plant at the deputies?
A. Yes, sir.
Q. Did you know of any acid being thrown out of those buildings?
A. Sure.
Q. How much of it was thrown out?
A. Oh, I don't know. I don't remember. There was some thrown, though.
Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) Are you working there now?
A. Yes, sir.
Q. What is your job?
A. Making carbide.
Q. When did you return to work?
A. Oh, about a week after the strike. I returned to work on a Monday, about a week and a couple of days after the strike.
Q. About a week and a couple of days, you mean, after you got out of the buildings, is that right?
A. Yes, sir.
2287 Q. Do you work in the Chemical Building, did you say?
A. No, sir.
Q. What building?
A. No. 9.
Q. You work in No. 9?
A. No. 9, and sometimes in No. 1.
Q. How did you happen to be in building No. 3 during this period of time?
A. Well,—
Q. Did you run in there when the strike was on?
A. No, sir; we was ordered there.
Q. You were ordered there?

A. Yes, sir.

Q. Now, let me see. Do you remember whether, the 19th of February, the deputies attacked building 3 or building 5 first?

A. No. 5.

Q. No. 5?

A. Yes, sir; they shot a couple of gas bombs in there, and then they came over to our place.

Q. And then they came over and shot some in your place, is that right?

A. Yes, sir.

Q. Now, were there any windows broken by the men, before the gas came in there?

A. I don't think so.

2288 Q. Do you remember the gas bombs breaking any windows, or not?

A. Oh, they broke a few, yes, sir.

Q. They broke a few?

A. Yes, sir.

Q. And then as soon as the gas was released in the buildings, the men started to throw things through the windows; is that right?

A. Yes, sir; they started breaking the windows, and then they started throwing.

Q. Did you help in the breakage of the windows?

A. No, I didn't.

Q. What were you doing at that time?

A. Well, I was—if I remember right, everybody was throwing, and I guess I was throwing too.

Q. You were just helping the other fellows, too?

A. Yes, sir.

Q. In the throwing?

A. Yes, sir.

Q. I believe your brother said that he helped on the fire hose there.

A. Yes.

Q. Was he in the same building with you?

A. No, he was in number 5.

Q. He was in number 5?

A. Yes, sir.

2289 Q. Now, when this gas attack started, you say that Swanson told you to throw stuff; is that right?

A. Well, we all knew what we should do.

Mr. Block: What was that?

Q. (By Mr. Walsh.) You all knew what you should do; is that right?
A. Yes, sir.
Q. Now, how much acid was thrown out of your building?
A. Oh, I don't know exactly, but there was some thrown.
Q. Some was thrown?
A. Yes, sir.
Q. What did they do; just pick up a bottle and heave it out of the window?
A. Oh, sure.
Q. Are your wages the same now as they were before the strike?
A. No, sir.
Q. What are you getting now?
A. I am getting 60 cents.
Q. And before, what were you getting?
A. Before the strike I was getting 57.
Q. So your raise amounted to 3 cents per week, is that right?
A. What is that?
Mr. Swiren: You mean, 3 cents per hour.
2290 Q. (By Mr. Walsh.) I mean to say, 3 cents per hour, or $1.20 per week; is that right?
A. Yes, sir.
Q. Did you get paid for the time you were occupying the buildings?
A. Yes, sir.
Q. How much did that amount to?
A. Around $31.
Q. You testified in the other case, did you not?
A. Yes, sir.
Q. Over in the Circuit Court?
A. Yes, sir.
Q. For the company?
A. Yes, sir.
Q. How many times have you testified?
A. Twice.
Q. This makes the third time that you have testified, is that right?
A. Yes, sir.
Q. Do you remember pretty well what you are going to say; is that right?
A. Oh, no; I just say what you ask me.
Mr. Walsh: All right. That is all.
Mr. Keele: Just a moment.

Redirect Examination.

2291 Q. (By Mr. Keele.) What you have said here is the truth, is it not?

A. Yes, sir.

Q. What you said at the other hearing was the truth, was it not?

A. Yes, sir.

Q. So that if you were asked these questions several hundred times, your testimony would still be about the same?

A. Yes, sir.

Q. And you do know what the answers are going to be to the questions?

A. Yes, sir.

Q. If the same questions are asked?

A. Just about; yes, sir.

Mr. Keele: All right.

Mr. Walsh: Just a moment.

Recross Examination.

Q. (By Mr. Walsh.) I take it that you have talked these matters over a number of times with Mr. Keele, have you not?

A. No, sir.

Q. You did not?

A. No, sir. I don't talk very much.

Q. To whom have you talked?

A. Well, I just—

Q. Did you talk to Mr. Banker?

2292 A. I just tell the truth always, that is all.

Mr. Walsh: All right.

Mr. Keele: That is all.

The Witness: Is that all with me?

Trial Examiner Dudley: That is all.

(Witness excused.)

Mr. Keele: Our next witness will take about an hour, I believe, if the examiner please, and I would much rather not start with him until tomorrow morning.

Trial Examiner Dudley: Very well. We will adjourn at this time until 9:30 tomorrow morning.

(At 5:25 o'clock p. m., Monday, June 21, 1937, an adjournment was taken until Tuesday, June 22, 1937, at 9:30 o'clock a. m. in room No. 4, United States Post Office Building, Waukegan, Illinois.)

2296 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XIII-C-80) • •

Room No. 4, United States Post Office Building,
Waukegan, Illinois.
Tuesday, June 22, 1937.

The above-entitled matter come on for further hearing, at 9:30 o'clock A. M., pursuant to adjournment.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525-One North LaSalle Street, Chicago, Illinois, by

Max Swiren, and Harold M. Keele, and

Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66 Amalgamated Association of Iron, Steel and Tin Workers of North America.

2297 PROCEEDINGS.

Trial Examiner Dudley: I will call the hearing to order.

Mr. Swiren: If the Examiner please, we would like to ask leave to present at this time an amendment to the answer of the respondent, amending paragraph 10. I have a signed verified copy and three additional copies I am filing with the Examiner at this time.

Trial Examiner Dudley: Off the record.

(Discussion outside the record.)

Trial Examiner Dudley: I will rule that the amendment to the answer of the respondent may be admitted, reserving however, the right of the Board to note any inconsistencies between the original answer and the amendment to the answer, noting that both were sworn to by respondent's president.

(The amendment was thereupon filed.)

Mr. Swiren: I think I ought to say to the Examiner in that connection that we were engaged in trial in the Circuit Court at the time that answer was prepared, and the time that ought to be devoted to an answer of this kind was not available, as the Board well knew.

We had to rely only on the information that the president himself and I had at that time. The fact is that such things as requests to return were made by seven or eight different people, and the information upon which changes have been made came largely from the testimony of the Board's
2298 own witnesses on the direct case.

Mr. Walsh: Mr. Swiren, do you take the position that the requests, these several requests that were made by various individuals were bona fide requests to return to work which the people refused?

Mr. Swiren: I think I will stand on the record. I just prefer to stand on the record.

Mr. Walsh: I see.

Mr. Swiren: I prefer to stand on the record as it is being made.

Mr. Walsh: I just wanted to know—

Mr. Swiren: I shall be glad to review the facts with you, if you like, and try to reach an understanding.

Mr. Walsh: Well, it does not make any difference, I guess.

Trial Examiner Dudley: Are you ready to proceed?

Mr. Swiren: Yes.

Mr. Keele: Frank Osenek.

FRANK OSENEK, called as a witness for the Respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) State your name please.

A. Frank Osenek.

Q. O-s-e-n-e-k?

2299 A. Yes.

Q. You live in the city of North Chicago, Illinois, do you not?

A. Yes.

Q. You are employed by the Fansteel Company at the present time?

A. Yes.
Q. How long have you been working for the Fansteel Company?
A. About five and a half years.
Q. You were employed by them on February 17th, 1937—
A. Yes.
Q. —is that right?
A. Yes.
Q. You went into one of the buildings at that time, did you not?
A. Yes.
Q. You went in there with the other men and seized those buildings, did you not?
A. (No answer.)
Q. You went into one of the buildings with the men at that time, did you not?
A. Yes. I was in No. 5.
Q. How long were you in that building?
A. I was in there from the 17th to the 19th.
Q. From the 17th to the 19th?
2300 A. Yes.
Q. You left the buildings on the afternoon of the day of the first attack of the deputies?
A. Yes.
Q. Who was boss in that building? That is, who gave orders in the building?
A. Well, Warner was in there, and Frank Zelenick and Peters.
Q. Elsworth Peters?
A. Yes.
Q. Did you see any acid brought up in that building?
A. Yes.
Q. Who brought it up?
A. Joe Ricke, and Yaeger, and—I don't know the other fellow. I know the two of them.
Q. Roy Brown?
A. Yes; that is right; Roy Brown.
Q. When you say "Ricke," you mean Joe Richveis?
A. Yes.
Q. And Fred Yaeger?
A. Yes.
Q. How did they bring that acid up?
A. On the elevator.
Q. You saw them bring that up on the elevator?

A. Yes.

Q. They put it on a truck, did they not?

2301 A. Yes.

Q. And brought it up in the elevator?

A. Yes.

Q. Where did they bring it from?

A. From the first floor, downstairs there.

Q. Where did they bring it to?

A. On the second floor.

Q. What did they do with it?

A. They have everything prepared to throw it out when the time comes.

Q. Was there any discussion with reference to that acid? Was there any talk about what should be done at all?

A. They said they would be prepared with everything, any time, when the time comes.

Q. How much acid did you see brought up there?

A. Oh, about a couple of dozen, I guess, or something like that.

Q. A couple of dozen bottles?

A. Yes.

Q. Were those bottles the same, or of the same type as that bottle you saw here yesterday containing the sulphuric—

A. Yes.

Q. —electroloid?

A. Yes, the same size.

Q. Were you there at the time the sheriff came there

2302 on the morning of the 19th of February?

A. Yes, I was there, bu I wasn't down below. I was up on the second floor at that time.

Q. All right. What happened when the sheriff came there?

A. Well, they gave them that injunction and told them to walk out, and the fellows didn't want to. That is all.

Q. Then the sheriff made an attempt to enter the building—

A. Yes.

Q. —through building 6?

A. Yes.

Q. What did the men do at the time the sheriff and his deputies attempted to enter the building?

What did the men in the building do?

A. Everything was just waiting there, that is all. Some of them was down below. They gave them that injunction

through the bathroom window. So then they read it up by the whole group upstairs.

Q. Are you referring to the time that the sheriff came there at noon, when he brought a copy of the injunction, or are you referring to the morning of the 19th?

A. I don't know just exactly what time was that. I couldn't say.

Q. Was it at the time of the first attempt of the sheriff to enter the building that he read to the men, or was it the day before?

2303 A. I couldn't say.

Q. You do not recall?

A. I coudn't say.

Q. All right. Did anybody give any orders to the men when the sheriff came there as to what they were to do? Did anybody inside of the buildings give any orders to the men as to what they were to do?

A. Of course, Warner said to be prepared. Frank Zelenick said the same thing, and Yaeger, and I don't know who else.

Q. What did they say besides "Be prepared"? Did they say anything else?

A. They said "There is going to be a gas attack now."

Q. Yes. Did they say anything more as to what they were going to do if the men made an attack, that is, if the deputies made an attack?

A. Some of them said, like this Joe Chudy "If they don't leave us alone," he said, "we are going to start tearing the machines down and throw them down on the deputies."

Q. All right. Did Warner say anything about—

A. I told him at the same time, I said, "You better not do that." He said "Never mind." He said, "We are going to do it."

Q. Did Warner say something about getting something? Did he say "Grab something, and throw anything down you can"?

A. He said "Grab everything what you can."

2304 Q. Now, then, when the deputies attempted to enter, did the men throw anything out of the windows?

A. Yes.

Q. What did they throw?

A. Acid, spools, and whatever they can grab.

Q. Were one or two of the men throwing, or was that quite widespread?

A. Well, there was Chudy. He had a bottle in his hand. Chudy was just throwing down, and a gas bomb came up and split that bottle into pieces.

Q. You are talking about Joe Chudy?

A. Yes.

Q. You say he was ready to throw acid, and a bomb, a gas bomb came in and struck the acid?

A. Yes.

Q. And broke it in his hand?

A. Yes.

Q. Then what did he do? What did Chudy do when that happened?

A. At that time he walked away from the window for a while and then I couldn't remember what happened after that. Then all the rest of them guys was around the windows throwing down everything they can.

Q. Did you see anybody else besides Chudy throwing anything?

A. Well—

2305 Q. Was everybody throwing?

A. Almost everybody, anyhow.

Q. You left the building in the afternoon?

A. Yes.

Q. In the afternoon, around what time?

A. Five thirty in the evening.

Q. How did you get out? How did you happen to get out?

A. I went down, and I saw the boys, all the boys was busy on the food. You know, they took it over the fence, and put it up. I went down that day—

Q. Did you ask anybody whether you could go, or did you just slip out?

A. I was asking a couple of the boys before, and they said "You got to stick with us". I said to myself, "I am going to get out any time I want, any time I feel like it."

Q. So you slipped out?

A. I slipped out at that time.

Q. All right. Now, who said to you that you had to stick and that you could not go?

A. Frank Zelenick, and that Peters.

Q. Elsworth Peters?

A. He was the main one, and a couple of other guys; I can't remember just who.

Q. Who handled the fire extinguisher in there?

A. Fred Yaeger, Warner, and a couple of other guys
2306 I don't know; Warner was by the window, and this other bunch was on the back, and they turned it on before they were supposed to turn it on. Then Warner was raising hell on them. He said, "You should wait a while". That is all.

Q. Was there any discussion among any of the men as to the throwing of the acid; did anyone say the acid should not be thrown?

A. Well, I don't know; I couldn't say on that. If anybody said anything like that, they just kept on throwing, that is all.

Mr. Walsh: You may cross examine.

Cross-Examination.

Q. (By Mr. Walsh.) Have you ever been arrested?
A. No, never.
Q. You say you have never been arrested?
A. No.
Q. Have you ever been arrested for anything?
A. For nothing, not in this country.
Q. Were you ever arrested in the old country?
A. No.
Q. Were you ever arrested in any country?
A. I was arrested no place.
Q. You and Chudy do not get along very well, do you?
A. Well, Chudy and myself is this: At that time, you know, when this person what was sitting right back
2307 here, back of Mr. Keele—he is one of them, and I am going to tell him right out—he always teach me what is Russia and what is this country.

I was down in the courthouse, and I told a certain man that this man looked for citizen papers and I know what is going on. I told him everything, and when the time comes he got it just the same, because Chudy went down to the judge's home with him and told him I was a liar.

Q. So just because a certain man got his citizenship papers and Chudy helped him, you do not like Chudy, is that right?

A. No, sir. We was good friends before. After that we never was no more, but before that we was always good friends.

Q. You do not like Chudy now, do you?
A. Of course not.

Q. You would not do anything to help him, would you?
A. No.
Q. Would you do anything to hurt him?
A. No.
Q. Chudy is a liar, is he?
A. What do you mean?
Q. Is he a liar?
A. Well, he was that time anyway.
Q. He was that time a liar?
A. Yes, he was.

Q. Now, Chudy is a man who wanted to throw ma-
2308 chinery out of the window, is that right?

A. Yes.
Q. Who told him not to throw it out?
A. I told him.
Q. You told him?
A. Yes.
Q. Did he take your word for it?
A. He just told me "Never mind". He said, "We are going to do anything we feel like."
Q. You and Joe Richveis do not get along very well, do you?
A. Joe Richveis—we have some kind of an argument a couple of times before on account of some wire. He claimed I was putting that wire up in the reel, but I didn't. Since that time it is kind of arguing between us, but after while I settle up again, and we was good friends again.
Q. Did you have any further arguments with Joe about working in the shop?
A. Not any more than that.
Q. The one time you and Joe had trouble was when he accused you of putting up some wire wrong, is that right?
A. Yes. That was about a year before, or so.
Q. That was about a year before that?
A. What?
Q. That was about a year before that?

A. Yes.
2309 Q. You do not like Joe now, is that right?

A. Well, I can't say I don't like him, but that was the trouble, that is all.
Q. You and Joe had some trouble; you did not get along very well, is that it?
A. Yes, with the wire that time.
Q. Bill Warner told the fellows not to take any machinery down, did he not?

A. I don't know about Bill Warner, because he was down at the other end.
Q. He was at the other end?
A. That happened right in the middle of the third floor.
Q. That happened right in the middle of the third floor?
A. Yes.
Q. Of Building 5?
A. Yes.
2310 Q. Is that right?
A. Yes, Building 5.
Q. Now, I think you threw some acid, did you not?
A. I didn't.
Q. You did not throw any acid?
A. Not a bit.
Q. You did not throw anything out?
A. Not a bit; not a spool, or not a piece.
Q. You did not throw a piece of iron or steel and break a window?
A. Not a bit. I was so nervous right then—
Q. You were pretty scared, were you not?
A. I was, because I was nervous since I was eleven years old, anyway.
Q. You are a very nervous person, are you not?
A. I was.
Q. You are still nervous now, are you not?
A. What?
Q. You are still nervous now, are you not?
A. Yes.
Q. You say that Yaeger and Brown and Richveis and somebody else brought acid up from down stairs?
A. Yes.
Q. Is that right?
A. Yes.
2311 Q. How did they bring that up?
A. In the elevator.
Q. Did you see where they got it?
A. Why, I wasn't down there, but probably—I know where the stuff is, I didn't see it where they got it, but I know where the stuff was, up on the shelf there.
Q. You know where it is kept?
A. Yes.
Q. You know that, do you?
A. Yes.
Q. Did you see that come up on the elevator? Did you see them come up on the elevator with it?

A. Yes.
Q. You saw them on the truck?
A. Yes. I was right by the main door upon the third floor that time.
Q. They came up on the elevator?
A. Yes.
Q. That is the way they brought it, is that right?
A. Yes.
Q. Where did they put it?
A. They put it right by the door there.
Q. Right by the third floor elevator?
A. Yes, the main door.
Q. How long did it stay there?
2312 A. I don't know just exactly how long it stayed there.
Q. Who helped to turn the fire extinguisher on?
A. Yaeger was in the back by the tank over there and Warner was by the window. Warner was hollering "Wait a minute. Wait a minute. It isn't time yet". They turned it on just the same, and it went flying out the window.
Q. Was that the fire hose, or the fire extinguisher?
A. That one was the fire extinguisher.
Q. Is that the Foamite thing on wheels?
A. That is it. That is the one.
Q. If Chester Hook—do you know Chester Hook?
A. Yes.
Q. If he testified that he helped to operate that fire extinguisher down in Building 6, would he be wrong, or would he be right?
A. In Building 6?
Q. Yes.
A. I don't know. At that time they—
Mr. Swiren: I think we ought to suggest that counsel is assuming—
Mr. Walsh: I think probably you ought to let me cross examine the witness.
Mr. Swiren: I think we ought to know—
Mr. Walsh: Mr. Swiren, I am cross examining the witness.
2313 Mr. Swiren: I am addressing myself to the Examiner.
Mr. Walsh: I will conduct my own cross-examination.
Mr. Swiren: I am trying to address my remarks to the Examiner.
Trial Examiner Dudley: Let him continue.

Q. (By Mr. Walsh.) Where was this fire extinguisher?
A. It was right up on the third floor.
Mr. Swiren: I would like to make an objection, if the Examiner please.
Trial Examiner Dudley: Objection overruled.
The Witness: I know where that tank was before.
Q. (By Mr. Walsh.) Where was it?
A. In the quiet time before the strike, it was right down in the carpenter shop, right in the next room there. I didn't see who brought it up, but I know it was up there, and it was operated.
Q. You were on the third floor?
A. I was up on the third floor at that time.
Q. That is, at the time of the first gas attack?
A. Yes.
Q. You were not down at Building 6 at any time, were you?
A. Not in Building 6, no.
Q. You do not know whether the fire extinguisher was down in Building 6 or not, do you?
A. I don't know anything about Building 6. The 2314 only thing I know is when I was in number 5.
Q. Are there two of these fire extinguishers on wheels?
A. I don't know. I know just the one I saw. I don't know about those other ones. I didn't see those other ones.
Q. Did you eat while you were in the building?
A. Eat?
Q. Yes.
A. Of course I ate.
Q. Who brought the food in?
A. I couldn't say just exactly who brought it, but I saw Adelman and his partner.
Q. How did you see them?
A. Out the window.
Q. You looked out the window?
A. Yes, when they helped them over the fence.
Q. Did you break any windows?
A. I didn't.
Q. You did not break any windows?
A. I didn't, no, sir. I can swear any time. When I swear, I swear for good, but them guys are lying.
Q. All right. If people who come here tell a different story from you, they are lying, is that right?

A. That is all right. They lie, at the same time.
Q. Everybody is lying but you, is that right?
Mr. Swiren: That is objected to.
2315 Trial Examiner Dudley: Objection overruled.
Mr. Swiren: I do not think that is a fair question.
The Witness: I know everything what was going on. I told the truth.
Q. (By Mr. Walsh.) Of course, I know you told the truth. I just wanted to find out how big liars these other people are.
A. I heard the people up in court here, how they lie, every damn one.
Q. Where did they turn the fire extinguisher on?
A. I don't know just what time it was.
Q. No; where did they turn it on? Did they point it out the window?
A. The hose was out of the window, sure, about so much. (Indicating.)
Q. Indicating about two feet.
A. The tank was over by the main door there on the third floor.
Q. Who was pointing the hose out of the window? Who had a hold of the hose?
A. I don't know just who pulled it over there. I seen Warner right there.
Q. You saw Warner right up there on the third floor?
A. On the third floor, yes.
Q. He said that they turned it on too quickly, is that right?
A. Yes. That is what he said. He said "Wait a
2316 minute, fellows, it isn't time yet".
Q. Well, did they use up all the fire extinguisher that was in there?
A. I couldn't say how much they used.
Q. How long did they squirt the hose out of the window?
A. They squirted it out a while, and then they stopped squirting.
Q. Did gas come in the building before you broke out the windows?
A. Why, I couldn't say that. I couldn't say nothing on that, how it was that happening, because I was so nervous.
Q. You were pretty excited, were you not, Frank?
A. What?
Q. I say, you were pretty excited?
A. Yes, I was nervous. That is all. I was just walking

back and forth, and I don't know what I am going to do, that is all.

Q. Then you do not remember very well what happened, do you?

A. I know something, the way I told you before.

Q. You were pretty scared, were you not?

A. I was.

Q. You are not very sure about just what happened, are you?

A. Oh, I saw a lot of things, anyhow.

Q. Well, do you remember what you saw?

A. Of course, I saw a lot of things I told already before.

2317 Q. You were a member of Lodge 66 when the trouble broke out, were you not?

A. Yes.

Q. You went back to work for the company after the trouble was over?

A. Yes.

Q. You got paid for the time the buildings were tied up, did you not?

A. I did.

Q. You got a raise after you went back, did you not?

A. I didn't get a raise after that.

Q. Did you get a raise before?

A. Before, yes.

Q. What were you getting before the trouble?

A. Well, I got one raise before, and then I got that general raise.

Q. The general raise was in November?

A. That was the one, yes.

Q. What was your rate just before the trouble?

A. Before the trouble, 65 cents.

Q. What is your rate now?

A. 65 cents.

Q. Who asked you to come back to work?

A. My foreman came to the house.

Q. Schardt?

2318 A. Schardt.

Q. Florian Schardt?

A. Yes.

Q. He came to the house and asked you, did he?

A. Yes.

Q. He knew at that time you had been in the buildings?

A. Sure.

Q. Did you talk to Florian Schardt or any of the officers of the company while the men were still in the buildings after you left?

A. No.

Q. On the 19th, when you went to go out, what did you do? Did you just go down and take the cars off the door and run out?

A. The door of the testing room was locked, but the key was in. I just turned that key, and I went through there and through the stock room and out.

Q. You went out what door?

A. There was only window that wasn't nailed down, and all the rest was nailed.

Q. You went out the door, did you not?

A. No. I went out the window.

Q. You went out the window?

A. Yes. The door was open of the testing room.

Q. You unlocked the door of the testing room and 2319 went through that room into the stock room?

A. Yes.

Q. Then you opened a window in the stock room, is that right?

A. Yes.

Q. Was that window broken out?

A. No. I just raised it up and went out.

Q. Now what side of the building did you go out on?

A. On the north side of the building.

Q. The north side of Building 5?

A. Yes.

Q. Then where did you go?

A. When I came up to the gate nobody answered me anything, not a bit. I just opened the gate and I went out, that is all.

Q. Who opened the gate for you?

A. Some deputy.

Q. Did he put you under arrest?

A. No, not a bit.

Q. You knew there was an injunction then, did you not?

A. Of course. They didn't do anything to me.

Q. Why did they not do anything to you?

A. I don't know why.

Mr. Swiren: That is objected to.

The Witness: I don't know why. I went out just as easy as could be.

2320 Q. (By Mr. Walsh.) Did they ask you your name?
A. They didn't ask me not a bit, not a thing.
Q. Do you know the deputy that let you out?
A. I don't know no one.
Q. Did you tell them what was going on in the building?
A. They didn't ask me. How can I answer?
Q. I guess you could not, if they did not ask you. You could not answer.
A. If they asked me, yes. They didn't ask me, so I didn't say nothing to them.
Q. How did the newspapers know you were out?
A. The newspapers?
Q. Yes.
A. There wasn't anything in the paper, nothing.
Q. Your name was in the paper, was it not?
A. I don't think so. I was looking in the paper, and I never saw my name. Even Schardt when he came down, he didn't know it. He just came down.
My friend up there, some Finnish fellow, he didn't know either. He just found out later, a couple of days after I was out. He came down to my basement, that is all.
Mr. Walsh: I guess that is all.
Mr. Keele: Just a moment.

Redirect Examination.

2321 Q. (By Mr. Keele.) Mr. Osenek, do you know whether or not there are two extinguishers in Building 5, fire extinguishers, with wheels on them?
A. I can't say there was two of them.
Q. You do not know that?
A. No, sir. I don't know, but I know one of them.
Q. The one that you saw was up on the third floor?
A. The third floor, yes, that day; but I saw many times before the strike it was down below.
Q. You have seen one down below?
A. Down below, before the strike, many times. That is all I can say there, that I saw, was just one. I don't know nothing else.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Keele: Mr. Aitchison.

ROBERT J. AITCHISON, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) You have testified previously in this case, have you not, Mr. Aitchison?

A. I have.

Q. Are there two fire extinguishers in Building 5?

A. There are.

2322 Q. Each of which has a tank of approximately 40 gallons capacity, with wheels approximately five feet high?

A. That is right.

Q. There are.

A. There are.

Q. One is set on the first floor and one is set—

A. One is set on the first floor, and the second one was on the fourth floor.

Q. That is, in normal operations, during normal operations, is that right?

A. Yes. I ordered it up there about the first of January, because we moved in a lacquering outfit there, with a spraying booth, and we needed an extinguisher to take care of it.

Q. When did you first enter Building 5 after 5:30 on the morning of February 26th?

A. Oh, several hours after.

Q. Several hours after?

A. After the men were evicted.

Q. Did you observe the position of the two fire extinguishers in Building 5?

A. I did.

Q. Where were they?

A. One was on the shipping room floor, at the head of the ramp. The second one was on the third floor of Building 5 with the nozzle pointing to the west.

2323 Q. Do you know whether or not those tanks were at that time empty or full?

A. I know the one on the first floor was empty. I am not certain whether the one on the third floor was partially discharged or not.

Q. I will show you Respondent's Exhibit No. 9, Mr. Aitchison.

A. Yes.

Q. I will ask you if that is an accurate representation of one of those fire extinguishers?

A. Yes, it is.

Q. Is that the position in which you found that fire extinguisher?

A. Yes.

Q. When you went in there on the morning of the 26th?

A. That is on the third floor of Building 5, yes, sir. That is the position.

Q. I show you Respondent's Exhibit No. 14. I will ask you if that represents the position on the first floor of Building No. 5, adjoining Building No. 6, where the other fire extinguisher was found?

A. It shows the condition of the floor, the building, and the damage done by the Foamite, but it does not show the extinguisher.

Q. Where was the extinguisher with reference to the 2324 portion of the building shown in the picture?

A. The extinguisher was to the east of this portion.

Q. How far?

A. Maybe 35 feet or 30 feet.

Q. On the same floor?

A. On the same floor.

Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) What is the damage represented there, Mr. Aitchison? What is the damage represented in Exhibit No. 14, done by the Foamite?

A. In Building No. 6—well, you can see the Foamite there. It attacks steel, and causes it to rust. That is Niagara shear you see there before you. It was badly rusted, and had to be reconditioned.

Q. As a matter of fact, Mr. Aitchison, for the last two years, the one fire extinguisher has been at the head of the ramp in Building No. 6, has it not?

A. That is also called a shipping room floor.

Q. So the way you term it, Building 6—

A. We connected Building 6 with Building 5, with a ramp.

Q. Is the stock room and shipping room the same?

A. That is the shipping room floor, and the stock room floor.

Mr. Walsh: Just so we understand where it was; that is all. That is all I want.

2325 The Witness: Yes.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Keele: John Germer.

JOHN GERMER, a witness called for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) State your name, please.

A. John Germer.

Q. Where do you reside, Mr. Germer?

A. What?

Q. Where do you live?

A. 215 South Orchard Street, Waukegan.

Q. You are employed at the Fansteel Company?

A. Yes.

Q. How long have you worked for Fansteel?

A. About fourteen years.

Q. You were working at Fansteel, at the plant, on the 17th of February, 1937?

A. Yes.

Q. You were one of the men who seized Building 3, were you not?

A. Yes.

2326 Q. Who was in charge of that building?

A. Swanson, Carl Swanson.

Q. I am speaking of the men in the building. Who was in charge of the men in the building, Swanson?

A. Carl Swanson.

Q. Did he have any one who assisted him?

A. Well, there was two boys, Frank Laatz, and he had several others I can't just remember.

Q. You were there on the day of the 18th of February when the sheriff came there with a writ, were you not?

A. Yes, I was.

Q. You saw him reading that writ?

A. Yes.

Q. He was standing outside of an open window, was he not, at that time?
A. Yes.
Q. There was a group of men inside of the window?
A. Yes.
Q. Grouped around the window?
A. Yes.
Q. Is that correct?
A. Yes.
Q. In that group was Carl Swanson, among others, is that correct?
A. Yes.
2327 Q. After the sheriff read the writ, he handed copies of the paper in, did he not?
A. Yes. There were several carbon copies.
Q. They were handed around among the men?
A. Yes.
Q. Those copies were distributed among the men?
A. Yes.
Q. Is that correct?
A. Yes.
Q. Did the men read those copies?
A. Yes, they did.
Q. Did they discuss them or talk about what was in them?
A. There was several discussions about them. I don't know just what it was, or all that was said about it.
Q. You were there the next morning, on the morning of the 19th of February when the sheriff and his deputies came there, were you not?
A. Yes.
Q. The sheriff read another paper to the men, did he not?
A. Yes.
Q. Did he read that through the window, too?
A. Yes, he did.
Q. Was there a group of men around the window at the time he read it?
A. There was several of them.
2328 Q. All right.
Mr. Walsh: What date was that?
Mr. Keele: What?
Mr. Walsh: What date was that? I did not get that.
Mr. Keele: That was the morning of the 19th.
Mr. Walsh: All right.

Q. (By Mr. Keele.) Then the sheriff attempted to make an entrance into Building 5, did he not?

A. Yes, he did.

Q. Through Building 6?

A. Through Building 6, yes.

Q. All right. Carl Swanson gave orders to the men as to where they were to go and station themselves around the building there, did he not?

A. He told them to all go up stairs.

Q. Did any of the men in Building 3 throw anything out?

A. Yes.

Q. Did you see anything thrown from Building 5 during that time?

A. There was spools and stuff coming out of that second floor window.

Q. What did the men in Building 3 throw out?

A. Everything that was handy.

Q. I did not hear you. What was that?

A. Everything that was handy, everything that was
2329 lying around there.

Q. Did you see acid brought up in Building 3?

A. No, I didn't.

Q. Did you see any acid up there?

A. There was acid up there, yes.

Q. Was there any discussion as to the throwing of that acid, or what was to be done with it?

A. Well, there was Simonson, myself, Frank Moxey, and a few other ones; we hid the acid, and put it under the tool room Boss' bench there,—or, rather, desk.

Q. Why did you do that?

A. We didn't want to throw it down on them.

Q. Why not?

A. On account of injuries to the eyes and skin.

Q. Did you discuss the throwing of that acid with anybody, or tell anybody it should not be thrown?

A. Just between the fellows that was around there at that time.

Q. How much acid did you see up there?

A. There was two cartons.

Q. Two cartons?

A. Yes.

Q. How many bottles are there in a carton?

A. Oh, I should judge about two or three dozen.

Q. Were you there on the morning of the 26th?

2330 A. Yes.

Q. When the sheriff came in the second time?

A. Yes.

Mr. Walsh: What was the answer?

Mr. Keele: He said "Yes".

Mr. Walsh: All right.

Q. (By Mr. Keele.) Did the men throw anything out of building 3 that morning?

A. I couldn't say. We didn't stay in there long enough, after they started throwing gas shells in.

Q. Did you see anything thrown out of building 5 that morning?

A. I couldn't say, because we was all down stairs at the time.

Q. Did you see any windows broken in the building on the morning of the 19th, the time the sheriff was there, the first time?

A. Yes, they were all broken.

Q. How did they happen to be broken? Tell us what took place there.

A. Well, at the first gas attack they started throwing gas shells in there, and they went along breaking out the windows, so we could get some air.

Q. Who did that?

A. There was a whole bunch of fellows.

2331 Q. Men on the inside, or men on the outside?

A. Men on the inside.

Q. In other words, they ran along and hit these windows like they were playing an xylophone, and knocked them out?

A. They knocked them out.

Mr. Walsh: Did they do it with both hands?

Mr. Keele: Yes.

Mr. Walsh: Yes. It was very musical, "tinkle, tinkle, tinkle".

Q. (By Mr. Keele.) They knocked out a great number of windows, did they not, that morning?

A. Well, all they could reach.

Q. All they could reach?

A. Yes.

Q. Did you observe whether there were one or two or three men throwing things on the 19th, or were there a great number of men engaged in throwing things?

A. They were practically all throwing.

Mr. Keele: You may cross examine.

Cross-Examination.

Q. (By Mr. Walsh.) You threw some mill ends, did you not?
A. Some what?
Q. Mill ends.
A. I couldn't say that I threw mill ends out.
Q. What was it you threw out?
2332 A. Well, anything that was laying around.
Q. Anything that was handy?
A. Yes.
Q. I believe you stayed in all the time?
A. Yes.
Q. You went back to work when it was over?
A. Yes.
Q. You got paid for the time you were in the building, did you not?
A. Yes.
Q. I believe you had a rod breaking out windows, did you not?
A. I didn't break out windows with a rod.
Q. Not with a rod?
A. No.
Q. You just threw the things you could get a hold of through the windows, so you could get air, is that right?
A. I was taking care of the back at that time.
Q. You were taking care of the back?
A. I was taking care of the windows.
Q. I see. Did you get a raise after you went back to work?
A. Well, yes, with the rest of the boys.
Q. Let us see. I believe you testified the other day about that, but I have forgotten what it was. What was it?
A. It was five cents an hour.
Q. Five cents an hour?
2333 A. Yes.
Q. You have your same job?
A. Yes.
Q. The men threw things that were loose around there, did they not, to break out the windows?
A. Well, anything that was loose, sure.
Q. Did you break any windows before any gas came in?
A. No.

Q. And the reason for breaking the windows was to get some air, was it not?

A. To get some air, yes.

Mr. Walsh: That is all.

Trial Examiner Dudley: Is there anything further, Mr. Keele?

Mr. Keele: Yes, I have one question.

Q. (By Mr. Keele.) With reference to the things that they were throwing out, were they throwing those out to break windows?

A. No. They were throwing them out at the deputies, to keep them away from the building.

Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Keele: Mr. Simonson.

ALF SIMONSON, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

2334 *Direct Examination.*

Q. (By Mr. Keele.) State your name, please.

A. Alf Simonson.

Mr. Walsh: What is the witness' name?

Mr. Keele: Alf Simonson.

The Witness: Alf Simonson.

Q. (By Mr. Keele.) Where do you live, Mr. Simonson?

A. North Chicago.

Q. You are employed by the Fansteel Company?

A. Yes, I am.

Q. You were employed by the Fansteel Company on February 17th?

A. Yes.

Q. You are one of the men who was in building 3?

A. Yes, I was in 3.

Q. You saw the acid up there in building 3, did you not?

A. I saw it brought up.

Q. You saw it brought up?

Mr. Walsh: Speak a little louder, please, Mr. Simpson. I cannot hear you.

The Witness: I saw it brought up, yes.

Q. (By Mr. Keele.) You protested against the use of that acid, did you not?

A. Yes, I did.

Q. What did you say about that, and to whom?

2335 A. Well, I saw it was marked "Poison", and I was afraid it would cripple somebody for life.

Q. What did you do about it?

A. Why, I protested to Carl Swanson. He was one of the fellows that brought it up.

Q. You say he was the one that brought it up?

A. He brought one carton up; I don't recall who brought the other one up.

Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) You remained in the buildings until what date, Mr. Simonson?

A. Sunday.

Q. That was on Sunday of—do you remember the date?

A. About the 20th, I think.

Q. The 20th?

A. Yes.

Q. I believe you received a notice that your wife was ill, is that right?

A. I did.

Q. The boys told you to go home, did they not?

A. I talked with Luther Henry through the window. He told me to try and get out if I could.

Q. Did you have any trouble getting out?

A. He came back in the meantime, and talked to

2336 Carl through the front window, and then they let me go.

Q. As a matter of fact, the boys told you to go, did they not?

A. Yes.

Q. I beg your pardon?

A. Yes.

Q. They told you your job was home taking care of your wife, did they not?

A. They told me to go home. That is all they said. Carl Swanson and Ed Ruck were the two that spoke to me.

Q. They told you to go home, that your wife was sick?

A. They talked to Luther Henry and Howard Phillips through the window.

Q. They wanted to find out whether the message you received was actually a fact, is that right?

A. I suppose.
Q. You later returned to work, did you not?
A. Yes, I did, the following Wednesday after they got them out.
Q. You got your same job back?
A. Yes.
Q. You got a raise?
A. No. I didn't get a raise after I came back.
Q. Have you had a raise since you came back?
A. I haven't.
2337 Q. You participated in the general raise in November, did you not?
A. No—well, I got a raise. A certain group of us got a raise. I wouldn't call it—I don't know whether it was a general raise or not, but I did get a raise.
Q. In the fall of 1936?
A. Yes.
Q. Yes.
A. I think that was in the fall some time.
Q. You were paid for the time the plant was shut down, were you not?
A. Yes.
Q. How much did that amount to?
A. I don't know, around fifty dollars. I think it was something like $47 or $50, for about nine days.
Q. You were a member of Lodge 66 when this trouble broke out, were you not?
A. Yes, I was.
Q. You do not know whether you are still a member or not?
A. I don't consider myself a member, after I went back to work.
Q. You figured inasmuch as you returned to work that the Lodge did not want you as a member, is that right?
A. Yes.
Q. You, I suppose, took part in breaking the windows out?
2338 A. No, I didn't break any windows.
Q. You did not break any windows?
A. No.
Q. Did you throw any things out that day that have been talked about here?
A. No, I didn't throw anything.

Q. I suppose you ate the food that was brought there, did you not?

A. Oh, yes, I ate a little.

Q. You ate during the time you were in the buildings?

A. Yes.

Q. What particular duties, if any, did you have in the building?

A. None at all. I didn't participate in any of them.

Q. You just stayed in?

A. Yes.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: We will take a short recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: I will call the hearing to order. You may proceed.

2339 Mr. Keele: I will recall Mr. Aitchison.

ROBERT J. AITCHISON, recalled as a witness on behalf of the respondent, having been previously sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele) You are the same Robert J. Aitchison who has testified previously in this case?

A. Yes.

Q. Mr. Aitchison, after the men were evicted from buildings 3 and 5 on the morning of the 26th of February, did you have a survey made of the condition of the plant and the buildings?

A. Yes, sir.

Q. What did you find as a result of that survey to be the condition of the buildings and their contents, buildings 3 and 5?

A. Well, we knew there were a great many panes of glass knocked out that had to be replaced.

There were some places in building 5 where the wooden sash or steel sash, the whole sash, was out. There were doors that had to be repaired and replaced. Much of the machinery

and equipment had suffered from neglect. It had not been operated. It was rusty in spots.

We had to check all of the equipment just to be sure it was not tampered with, and to see that there was no grit in the oil that might get in the bearings.

There was a lot of debris that had to be cleaned up.
2340 Some of the furnaces were burned out.

Q. What was the situation with reference to the small tools and parts?

A. Well, there had been a lot of them thrown out of the windows. We were short of everything from small tools to small instruments.

Q. What about your supplies and inventory of parts?

A. Well, they all had to be checked pretty closely. We were short some contacts and short of acid. We had to get a balance, so we could function again.

Q. What about the condition with reference to the wire department, and the wire spools?

A. Well, there had been much damage there. We had to get that straightened out by getting new spools, and getting the wire checked and getting it inspected again, and in some cases re-wound.

Q. What was the situation with respect to building 6?

A. Of course, from the defacement, from the Foamite, and the neglect and the atmospheric conditions—well, all of that had to be re-done and cleaned up.

Q. What about the sprinkler system and steam pipes?

A. The sprinkler system was broken in some spots, and had to be replaced, and re-fixed. Steam pipes were broken and had to be repaired.

Q. What about the telephone system?

2341 A. They had torn off some of the instruments and used them for a communication line between building 6 and building 3. They all had to be put back in original shape.

Q. Can you state what the amount of damage to the buildings and machinery was, in dollars and cents?

Mr. Walsh: Just a moment. I wonder if it is necessary for me to renew my objection to this entire phase. I did not renew it this morning, because I assumed my objection still stands.

Mr. Swiren: Your objection is on the ground of immateriality, is that right?

Mr. Walsh: That is right.

Trial Examiner Dudley: The objection of counsel for the Board to the entire line of testimony as it has been given this morning and as long as it continues, on the ground of immateriality, shall be noted and overruled.

The Witness: What was the question?

Mr. Keele: Read the question.

The Witness: Including inventory?

Mr. Keele: Yes, including inventories.

The Witness: Between $10,000 and $12,000, to get it in shape again.

Q. (By Mr. Keele) What if any other losses did the company sustain?

A. Why, because of the suspension of operations,
2342 we had to continue fixed charges and overhead expenses, for a straight loss to the company. I estimate those would run about $20,000.

Q. That is, for the period from February 17th to February 26th?

A. Until we got running again. In some departments we could not start very promptly. As a matter of fact, in some parts of the buildings there was a distinct odor of gas for two weeks which restricted operations.

Q. Was it due to lack of help, or lack of employes, that you could not start the departments?

A. Oh, no. It was due to the time that is required to get everything back in shape to run. We had plenty of people, but it takes time, a lot of time to clean up a mess like that. It took a lot of time to clean up the mess that was there.

Q. What other losses did you have, if any, outside of fixed charges and overhead?

A. We had a loss in business in the sense that we deal with a lot of large companies that rely on us as a responsible source of supply. When we are unable to make deliveries, they place orders with others.

For instance, I can give you the Ford Company, as an illustration. They used to have two sources of supply for contracts. Now, they have three. That is a loss that will perhaps go on indefinitely.

2343 Q. When did they get the third company?

A. When they want a product, they want it promptly. They want it in a hurry. When they have an interruption of deliveries from us, they turn to another source.

Q. They told you that, did they?

A. They told me that, yes.

Q. So now their business is split three ways, instead of two?

A. That is right.

Q. What does that amount to, approximately, in dollars and cents?

Mr. Walsh: Will you fix the time?

Q. (By Mr. Keele.) As the result of the stoppage of operations between February 17th and February 26th; it is the loss of business I am talking about.

A. Exclusive of any estimate on this Ford situation, I approximate it as $30,000.

Q. That is the loss to the company?

A. Yes, sir.

Q. That is not the amount of business you lost, but it is—

A. Loss to the company.

Mr. Walsh: That is loss of profits, I take it?

The Witness: Yes. This was in the middle of a busy time. We could not deliver and they would give the business to somebody else. We could have gotten it.

2344 Q. (By Mr. Keele) In other words, your loss here, as you total it up for the period was between $60,000 and $62,000 somewhere?

A. We had a lot more expense, such as the expense of attorneys and things like that. There is lots more than that.

Q. I am talking now of your loss with reference to the physical property and the business.

A. That is right.

Mr. Walsh: Of course, you do not mean that the service rendered by your attorneys is a distinct loss, do you?

The Witness: It is not a loss, but it costs money just the same.

Mr. Walsh: It is an expenditure, you mean.

The Witness: It is money going away from the plant.

Q. (By Mr. Keele) That was expended principally to get your plant back, was it not?

A. That is right.

Q. Your plant was reopened on March 3rd, or thereabouts, was it not?

A. Yes. It started to open on the first of March.

Q. How long was it before it was in full operation?

A. We had the place manned by the 12th of March.

Q. By the 12th?

A. Yes.

Q. Just what was the situation confronting you, or rather, what was your problem?

2345 A. As a business proposition?

Q. Yes. What was the general problem that faced you at the time the men were evicted on February 26?

A. Why, we had a plant that had been occupied for this time, that had been neglected for a period of nine days. Windows were broken, machinery needed to be checked. We had discharged about ninety people, our force. We were far behind in the delivery of orders. Others had expected shipments sooner, and we had been shipping in an effort to keep those orders from being cancelled. We had to get into production, and we had to supply them.

2346 We had to get the place open. We had to get people in there that could operate, and beyond that we had an additional burden from the standpoint that pretty nearly everybody who purchased from us knew our troubles and our problems, and your product is subjected to a very close scrutiny for its quality when you ship, after a condition like that.

We had to get the place open, and then we had to go out to the customers and get it into their minds that we were in a position to accept orders and make deliveries, and produce a good product.

Q. What did you do to solve those problems?

A. Well, I called Mr. Anselm in after we got the plant back,—I had to rely on him for plant production—and told him we would contract as fast as we could to get the buildings repaired, and get that done as soon as we could.

I told him he would have carte blanche to go ahead and recruit a new efficient crew, to get people in there and get running, and get running as fast as he could.

I told him to get the place cleaned up, and get things under way as quickly as he could, to get the machines running, and get the product going out.

I said, "Ship what you can out of stock. You take charge of the inside, and I will go on the road and get all the customers straightened out and start soliciting business again, and we will see if we can eliminate any doubt from

2347 their minds as to our ability to take care of it."

Q. You say you told him to get a new crew.

A. Yes.

Q. What do you mean by "a new crew"?

A. Well, after a situation like this—there were several

changes that I had in mind for a considerable period of time before this happened. The changes were somewhat radical in their scope, and involved some men that had been with us for some time.

As an illustration, it had been sort of a peeve with me, as to this maintenance department, for a couple of years. It is just perfectly silly and ridiculous for a plant of our size to maintain a large maintenance department on the grounds. It is not done in small plants.

I was also of that opinion because more than a year ago I had sought bids on work that was done by our people on the inside, and I found if we contracted for it we could get it done cheaper than we could with our own crew.

There is always a tendency with a large crew to putter around and always keep busy, and never get out of work. There is always something to be nailed up.

However, if you contract on the outside, you do not have to maintain a steady force.

There was another thing I had in mind I wanted to change.

We had men working in our tool room who did the same
2348 job day in and day out for 300 days a year, which was perfectly silly. Take dies for instance. We had two men that did nothing but make dies. We could go outside, and contract for them, for 100 or 150 sets at a crack, and we could get it done in a workmanlike manner on a production basis, and get it done cheaper than the way we were doing it.

I told Mr. Anselm—

Q. Were there any other changes you had in mind?

A. Yes. In our Contact Department we had a problem that had always irritated me somewhat, largely because it kept us so far out of line with our competitors in cost.

The jobs were filled by men who had been there a long time, and the work could just as well be done by girls as by men. As a matter of fact, that type of operation depends more on sensitivity of touch than it does on physical stamina. That was the cutting department.

At to the other part, the same remarks apply; that would apply to much of the grinding and radius work, side grinding and face grinding.

I told Al when we were opening this plant we might just as well correct these things that we had had in mind for a long period of time.

I said, "We are recruiting a crew, and we are going to go ahead and open the plant. Let us make the changes we

have discussed, and do it now. There is no use of going
2349 back in the old rut. We are all through running this place as an old women's home for some of these follows."

Q. With reference to the cutting department, you said you had learned that you were out of line on your costs as compared with your competitors.

A. Yes.

Q. Tell us a little more about that.

A. Well, in May 1935, I think it was, or in April, 1935, I hired a man by the name of Gwinn who used to work for the Mallory Company, which is one of our principal competitors. He was placed in there as our chief contact engineer. As such he demonstrates materials to customers and sells in an engineering fashion.

When we would work up our costs on different jobs, Gwinn would always point out how high we were compared to what he knew could be done in Indianapolis. Shortly after that, after Gwinn called that to my attention many times and complained bitterly about it, I hired a couple of efficiency men out of Indianapolis, who just finished the job for the Mallory company.

When they looked at our rates, and standards and saw how we were operating, at what high prices with men doing that kind of work, that was one of the first things they commented on. They said, "Here are some reasons why your costs are out of line."

2350 I know the Krolite Company out of New Jersey runs the same way, with women. It is not an arduous job. It is a question of touch.

These problems concerned many individuals, employees who had been there for a long while. I felt that in a situation like this, it was as good a time to correct it as any.

Q. Did you make any changes?

A. We did.

Q. For instance, in the contact department did you replace men with women?

A. Yes, sir.

Mr. Keele: Will you mark this Respondent's Exhibit No. 20 for identification, please, Mr. Reporter.

(The document referred to was marked Respondent's Exhibit No. 20 for identification.)

Q. (By Mr Keele.) I show you Respondent's Exhibit No. 20 for identification, Mr. Aitchison.

A. Yes.

Q. I will ask you if a portion of that exhibit represents the men who were replaced by women in the cutting department?

A. Yes, sir.

Q. Will you just read the names of the cutters?

A. Leo Daluga, Harold Dreyer, Clarence Dreyer, Charles Fulkerson, Sr., Edward Schuman, Eric Lindberg, T. E.
2351 Fagan, William Magness, Charles Smith, Orlin Swanson and Stanley Verenski.

Q. They are all—

A. Incidentally—

Q. Three men were retained, were they not?

A. Three of these men were retained.

Q. Which men were retained, do you recall?

A. (No answer.)

Q. It is the last three, is it not?

A. I think Smith, Swanson and Verenski were retained. Is that right, Al?

Mr. Anselm: That is right.

Q. (By Mr. Keele.) Are they doing cutting jobs?

A. No. We brought them into help train the girls, and then we put them on grinding jobs which are difficult, and which require some of the skill that they have.

Q. All of the persons doing this work of cutters in the plant are now women, is that correct?

A. That is right.

Q. What has been the result in costs, after replacing the men with women?

A. Well, we have reduced our costs very substantially in two ways. There has been a reduction not only in the cost of doing the cutting work, the labor cost of doing it, but we have a very much higher degree of inspection result
2352 than we had before.

We are getting a better product than we used to get.

Q. In other words, there is less waste?

A. That is right.

Q. There are less culls thrown away?

A. Yes.

Q. There are less cutting wheels used?

A. Yes.

Mr. Keele: Will you mark this Respondent's Exhibit No. 21 for identification, Mr. Reporter.

(The document referred to was marked Respondent's Exhibit No. 21 for identification.)

Q. (By Mr. Keele.) I will show you what has been marked Respondent's Exhibit No. 21 for identification, Mr. Aitchison.

A. Yes.

Q. I will ask you if that represents a chart or table showing the comparative costs of operation—

A. Yes.

Q. —of the cutting department under the regime when the men were doing the work, and under the present regime, with the women doing the work?

A. Yes.

Q. Is that an accurate representation of those costs?

A. It was put together for me by the head of the
2353 cost department.

Q. You believe it to be accurate?

A. Yes.

Q. Will you indicate for the purposes of the record, and for the Examiner's benefit, the savings that have been accomplished.

A. Well, here is an illustration. Take this large disk, .187 by .037. In December the cost with the men was $1.73. In January and February the cost was $1.73. In March, the first month we put women on, it was $1.88. In April, the second month it was 75 cents, and in May, 66 cents.

Q. In other words, your costs have been reduced to a little more than one-third of what they were, is that right?

A. That is the total average. This one I pointed out is rather a larger percentage.

Q. There has been a saving, has there not, in every department?

A. Yes, sir.

Q. That appears on this chart?

A. Yes, sir.

Q. Now, directing your attention to grinding and spinning, which as I understand it includes crowning and polishing of the contacts,—is that correct?

A. Yes. The spinning is the fixing of them to reeds and arms.

2354 Q. The grinding includes crowning and polishing?

A. That is right.

Q. With reference to this Exhibit No. 20, is there a por-

tion of it that represents or sets forth the names of the men who have been replaced in that respect?

A. That is right.

Q. Will you read those for the record?

A. Ed Brunke, Al Bunton, Bill Graimer, Stanley Grum, Victor Hertel, John Praski, Stanley Janis, William Van Treeck and Frank Nicokley.

Q. Those men have been supplanted by women, is that correct?

A. That is right?

Q. In that department?

A. Yes.

Q. Some of those men are still working for the company, as I understand it, is that correct?

A. Yes, sir.

Q. But they are in other departments?

A. That is right.

Q. Some of them are working on heavy grinding, isn't that right?

A. Yes. I do not know, but I think there are three or four or five on heavy grinding.

Q. What has been the result of your substitution of women for men in the grinding department, we will call
2355 it, of your contact department?

A. We have reduced our costs, and I think we have improved our efficiency in some senses.

Mr. Keele: Will you mark this as Respondent's Exhibit No. 22 for identification.

(The document referred to was marked Respondent's Exhibit No. 22 for identification.)

Q. (By Mr. Keele.) I will show you Respondent's Exhibit No. 22 for identification.

A. Yes.

Q. Does Exhibit No. 22 represent a chart setting forth the comparative costs of grinding under the regime when the men were used, and under the new plan whereby women are used?

A. That is right.

Q. Does that chart show—or rather, what does that chart show? Would you point out some specific items?

A. It is a comparative grinding cost per thousand pieces of specific parts we make.

Q. Yes.

A. As an illustration, take that 104—1135 operation. That is a crowning job. In December under the men it was 62.6.

Q. That is 62.6 cents?

A. Yes, cents per thousand.

Q. Yes?

2356 A. In January it was 65 cents. In February, 65 cents. Under the women, in March, the first month, the cost was 66.4 cents. It was 49.1 cents for the second month, and 44 cents for May.

Q. In other words, that cost was cut approximately one-third?

A. That is right. It was not only cut from 75 cents to 41 cents, but there was another thing that we did in this situation at the time.

We wanted to change from this piecework basis. We make a great many different kinds of contacts. No matter how careful you try to be in setting a piece rate, you are bound to create a number of inequalities.

In the reopening of the plant we discontinued all piecework, and put people in on the day work basis, which means that you add more of a burden to the foremen to see that they make good.

You do not keep them so long as you do on piecework. After all, if they are on piecework, and there is a vacant bench what difference does it make whether they come up to the average of the group or not?

Q. What does a change from the piecework basis to the hourly basis entail with reference to the worker who is not able to keep up to the standard?

A. You mean, from piecework to day work?

2357 Q. Yes.

A. The burden is on the foreman or the forelady to get a crew that can produce as they should.

Q. When a person is on piecework, he is paid according to what he does, isn't that correct?

A. The number of pieces, that is right.

Q. So if a person is a poor worker, he does not make as much money?

A. That is right.

Q. But if they are on an hourly basis, it does not make any difference whether they are a poor worker or a good worker; they get the same rate of pay?

A. They get the same rate of pay.

Q. And the company bears a loss as the result of their inefficiency?

A. That is right.

Q. Whereas the worker bears the loss in the case of the piecework?

A. That is right.

Q. Now, with reference to the spinning, what do you do in that department, that sub-department of the contact department?

A. Well, I do not think I know very much about spinning.

Q. Well, on this chart—

A. There were two that were previously used in that
2358 department that were replaced.

Q. By women?

A. Yes.

Q. They were replaced by women, is that correct?

A. Yes. That is a simple job, too.

Q. By the way, what men, if any, and how many—withdraw that.

How many men are you using in the plant instead of the maintenance department, at the present time?

A. On February 17th we had 13 men and one foreman in the maintenance department. Today we have one carpenter, one electrician, a helper for each, and no foreman.

Q. Any work of any size—

A. The jobs of any size—

Q. —you let out to contractors?

A. —we contract for on the outside on competitive bidding.

Q. Has that effected a saving?

A. Yes, very materially.

Mr. Keele: Will you mark these Respondent's Exhibits Nos. 23 and 24, please, Mr. Reporter, for identification.

(The documents referred to were marked Respondent's Exhibits Nos. 23 and 24, respectively, for identification.)

Q. (By Mr. Keele.) I show you, Mr. Aitchison, what has been marked Respondent's Exhibit No. 23 for identification.

2359 A. Yes.

Q. I will ask you if that represents a list of the men—

Mr. Walsh: Pardon me.

Mr. Keele: Yes.

Mr. Walsh: I think you gave me a copy of the same one as you had before.

Mr. Keele: Yes. That is the wrong one.

Mr. Swiren: Here is 24. (Handing document to counsel.) I will give you 23 in just a moment.

Mr. Walsh: All right.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Keele.) I will ask you if that exhibit represents a list of the men—

A. This is the old maintenance department.

Q. —in the maintenance department who have been replaced by the four men you just mentioned?

A. Yes.

Q. Is that correct?

A. That is right. There is one carpenter, one electrician, and a helper for each.

Q. Who is the carpenter, do you recall?

A. The name of the new fellow, you mean?

Q. Yes.

A. He is the man who had charge of the contract work that was done when we rebuilt and remodeled much
2360 of the office. He was a carpenter there.

Q. He has a helper?

A. That is right.

Q. You have one electrician?

A. Yes, sir.

Q. He has a helper?

A. That is right.

Q. Now, there were plenty of men in these trades available after February 26th, were there not, so if you had wished to rebuild those departments, you could have?

A. As a matter of fact, a week after the plant opened, we had the applications on our desk of more than 700 people out of Lake County alone looking for work at the Fansteel Company.

We could have replaced anything, as far as help was concerned.

Q. What has been the result of the change in program with reference to the tool room? Has that effected a saving, or not?

A. Yes. We have reduced from, I think it was, 18 down to about 9. We just cut it in half.

Q. Has that effected a saving?

A. Very much so.

Q. That work is now farmed out to contractors, is that right?

A. That is right.

Q. It is now placed on a production basis in the
2361 hands of persons or companies with adequate machinery to take care of that very thing?

A. As an illustration, we used to make dies 300 days a year. We had men working on them all the time. When we were busy, and needed them, they stepped it up a little bit. If business was a little slack they made dies anyway.

As it is now, we buy 100 or 150 sets at a crack from people on the outside. They turn it out as a production job. They come in satisfactorily and cheaper than we used to be able to make them.

Q. I show you Respondent's Exhibit No. 24 for identification.

A. Yes.

Q. I will ask you if that represents a list of the men who did not return to work in the tool department?

A. It does, except for the fact that the second one is spelled wrong. It should be "Frank Moxey" instead of "Frank Mosey".

Mr. Swiren: I do not think he would want us to spell it that way.

The Witness: That is right.

Q. (By Mr. Keele.) Is it the intention of the company to retain as a fixed plan, the changes which have been made in those departments?

A. Yes; they are changes I have discussed and wanted to make before.

2362 Q. Could you have gotten plenty of men to rebuild the personnel of the tool room?

A. Yes, sir.

Q. On February 26th?

A. Yes, sir.

Q. Competent men?

A. Yes.

Q. What orders, if any, did you give to Mr. Anselm with reference to re-staffing the plant?

A. Well—

Q. (Continuing.) After the strike, or after the men were existed on February 26th?

What did you say to him? What did you tell him?

A. I told him "We have a big job here. You take care of the plant, and I will take care of the outside. I want you to go and get a crew in there, an efficient crew."

I said that we were going to start functioning with the

changes I have mentioned, the changes in the departments being an improvement. I told him to get an efficient crew, and that I would give him carte blanche to do it.

2363 Mr. Keele: Will you mark this respondent's exhibit No. 25, please, for identification.

(The document referred to was marked respondent's exhibit No. 25 for identification.)

Q. (By Mr. Keele.) I show you respondent's exhibit No. 25 for identification, Mr. Aitchison.

A. Yes.

Q. And I will ask you if that represents a breakdown or analysis of production of production employes at the Fansteel Corporation, and Vascoloy Ramet, according to the bases of employment?

A. Yes.

Q. I mean by that, hourly basis, piece work, salary, or whatever it may be.

A. Yes. This was prepared from the payroll records by our cost department.

Q. What, if any, relationship is there between Fansteel and Vascoloy Ramet so far as operations are concerned?

By that, I mean, eliminating any question of financing, or any question of ownership of stock, what is the relationship? I am talking about physical operations of the plants.

A. They lean on Fanstool for many essential parts. The relationship is, if Fansteel does not run, Vascoloy Ramet cannot run.

2364 As an illustration, all of their electricity comes through Fansteel lines. The gas comes the same way. They lean on the Fansteel laboratories for all technical service. Eevery one of the carbide ingredients that go into their mixers, are made by the Fansteel Company. Tantalum carbide is made by Fansteel.

The finished product is made by Vascoloy Ramet. They cannot run unless Fansteel is running.

Q. For many years Fansteel made the same products that Vascoloy Ramet is now making, is that correct?

A. Prior to October 1st, 1933, it was done by Fansteel.

Q. Fansteel operated in the same building, and the work was done in the same building that Vascoloy Ramet now occupies?

A. No.

Q. No?

A. No. As the business grew, we had to set up larger

quarters, so we could get out of the Fansteel tool room, and moved it over in a building by itself.

Q. I see.

A. The carbide is made in the same place as it was before.

Q. There is an inter-exchange, as I understand it, of supervisory work, or supervisors between the two companies, is that correct?

A. There is to this extent: all technical service comes out of the Fansteel Laboratories. As to administrative
2365 service, I run both companies. As far as the treasurer's job, or the secretary's job, the same men fill those jobs for both companies.

Q. As you have stated, many of the necessary services and products used by Vascoloy Ramet come from Fansteel?

A. That is right.

Q. So the two companies operate as a unit, is that correct, as far as operations are concerned?

A. They operate together. They have to operate together. They cannot run—

Q. They cannot run inter-dependently at all?

A. No.

Q. Or rather, I should have said, "independently". They are inter-dependent, as I understand it; one has to have the other, isn't that right?

A. That is right. Fansteel can run without Vascoloy Ramet.

Q. Yes.

A. But the Vascoloy Ramet cannot run without Fansteel.

Q. Vascoloy Ramet cannot run without Fansteel?

A. No.

Q. Is that right?

A. Yes.

Mr. Keele: I now wish to offer in evidence RESPONDENT'S EXHIBITS NOS. 20 to 25, both inclusive.

2366 Mr. Walsh: I would like to have the record show my objection on the ground of immateriality.

Trial Examiner Dudley: Objection overruled. They may be admitted.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 20 to 25, both inclusive.)

Mr. Walsh: Are you through?

Mr. Keele: Yes. You may cross-examine. Were the exhibits admitted, Mr. Examiner?

Trial Examiner Dudley: Yes.

Mr. Keele: All right.

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Aitchison, am I correct in my recollection that the reason for setting up a separate corporation in Vascoloy Ramet was to compromise certain patent difficulty?

That is correct, is it not?

A. No, not necessarily. In those days we did not have a lot of money. When we wound up our settlement of the patent difficulty, one of our principal customers had distributed ramet under the name of "Vascoloy". That was the Vanadium Alloy Steel Company.

When we were settling up our patent troubles, if we had not been willing to take Vanadium Alloy Steel Company with us, we would have lost the largest customer we
2367 had. Therefore, we made a deal with Vanadium Alloy Steel Company in which they put up a lot of money, and took over the sales agency to continue as part of the distribution, with a minority interest.

Obviously, it is just good business to segregate the operations, at least so they are not confused too closely with Fansteel.

Q. They took 25 per cent of the stock, as I understand it?

A. They took one-third of it.

Q. One-third of it?

A. Yes.

Q. I thought your testimony was 75 per cent of the stock of Vascoloy Ramet was owned by Fansteel?

A. No. It is two-thirds and one-third.

Q. Two-thirds and one-third?

A. Yes.

Q. Is that right?

A. Yes.

Q. I see.

A. I hope I did not make that mistake. There is no basis for it.

Q. That is just my recollection.

A. No. It is two-thirds and one-third.

Q. I may be wrong.

A. It is two-thirds and one-third.

2368 Q. Did you find in your survey of the buildings, Mr. Aitchison, damage to the machinery other than rust and neglect?

A. If there was other damage, there was very little.

Q. Very little?

A. Yes.

Q. The main thing you found was a demonstration of the principle in manufacturing known as "machinery rusts out faster than it wears out", is that correct?

A. Yes, especially if it is not running at all, and there are no windows in the place in the wintertime.

As an illustration, take a furnace. If it is not properly adjusted, it cools too fast and you crack the tubes and burn out the furnace.

That kind of stuff, we found.

Q. You found that?

A. We did not find any grit in the oil bearings.

Q. You found no deliberate vandalism, where there was deliberate destruction?

A. We found very little serious trouble with the machinery.

Q. I presume that the delay in getting your plant reopened was the delay that normally comes in starting a plant from scratch, was it not?

That is, after the cleaning up is done, after you get things cleaned up and inspected, it takes sometime for the
2369 process of manufacturing to start?

A. You mean, from February 26th, to May 12th?

Q. Yes.

A. I think we did that pretty fast.

Q. I think so myself. I think you did a pretty good job to get it going that fast.

A. You cannot start everything at once.

Q. No.

A. You cannot run 350 people in half an hour afterwards, and have them all working.

Q. It takes time to get a staff, and to get things moving?

A. It takes four hours to heat one furnace, and there were a number of other things which had to be done.

Q. I take it that you told Mr. Anselm to go ahead and get everything in ship-shape order, to get in an efficient crew, and to start working again.

Of course, it was necessary, I assume, when you changed your operations from men to women to take inexperienced help. You were unable to get any women—

A. Yes.

Q. —who were experienced in cutting contacts, for instance?

A. That is right.

Q. So it took a little time to get these girls to the point where they knew how to do it, is that right?

A. Well, they had to be trained.

2370 Q. That takes a little time, does it not?

A. Well, there was one girl there producing more than the men were by the first day she was there. It is not a long, difficult job.

Q. Does the average daily production of the girls, amount to as much or more than the production of the men?

A. It does.

Q. It does?

A. Yes, sir.

Q. Now, the average daily wage paid to the girls is considerably less than the piece work rate that was paid to the men, is that right?

A. That is right.

Q. In that way you effected a saving in the cost, is that right?

A. Well, except that I think that this requirement of the sensitive touch that most women have compared to men accounts for the lower costs we have today.

Q. That is, they do not use up so many wheels?

A. That is right, and the disks are better.

Q. There are not as many culls?

A. There are not as many burrs on the edges, or cracks, or chips out.

Q. I notice by this list of men in the grinding department —I do not know whether it appears in the cutting de-

2371 partment or not; yes, it does—that you retained some of the older men, like Charles Smith, Orlin Swanson and Stanley Verenski, who were cutters.

Were they transferred from cutting to grinding? Is that right?

A. Yes. We have some grinding jobs that are difficult.

Q. Those are jobs that require—

A. That are unusual.

Q. —a degree of skill and experience, I suppose, and may have some fatigue connected with them, is that right?

A. Yes. They have to be a little—well, it is a heavier job than the others.

Q. Then in the grinding department, I believe you said there were some men who were taken back and transferred to other jobs?

A. They were taken back and used to train new help, and then given other work.

Q. They were the trainers of the new girls just starting out, is that right?

A. That is right. Then we gave them other work when we got them started.

Q. I see. I do not recall what the situation was in the spinning department. Can you tell me about that?

A. I do not know much about that, except that these two men are not working there. Girls are working in the
2372 spinning departments.

Q. So really even you do not know—

A. I know these men are not working there.

Q. Exhibit 21 correctly reflects the difference in cost, is that right?

A. Yes. We carry pretty detailed costs in our place.

Q. Yes. The largest amount of reduction in cost has been accomplished by the saving in wages, is that correct?

A. Well, a better product that adds to the cost, less scrap —you figure cost on that, plus the fact that there is good production, and with a certain amount of fixed expense indicates a reduction in cost alone.

Q. By the way, most of these men in the cutting department have been with you a number of years, have they not?

A. Yes, they have.

Q. You never discussed with them the contemplated change in the company's manufacturing policy, did you?

A. We had some discussions at the time these so-called efficiency experts were there. Although a number of discussions were had at times, we thought the boys were satisfied. A couple of times they expressed dissatisfaction. I said, "Well, we will make an adjustment here." Naturally, we did not tell any man in the cutting department that we would like to get girls in there to do their jobs, although we did tell them that was what our competitors were doing.

Q. Now, going over to—

2373 A. It is right to say that as a matter of record the price level of contacts has been steadily declining for the last five or six years?

Q. I think it would be pertinent to do it.

A. I mean that in the sense that the price reached for certain jobs is way down from what it used to be.

Q. Is that due to quantity production, or just the manufacturer driving you down on the price?

A. I think it is due to the pressure of the purchasing department of people like Ford, General Motors and others.

Q. When they want something, they want it right away; they want it yesterday, is that it?

A. Yes. They play one against the other.

Q. By the way, the possibility of your labor troubles, I presume causes some sales resistance, is that it?

A. Yes, sir.

Q. After this trouble occurred it was necessary for you to take a trip around to various places to see your customers and assure them you were able to take care of your business?

A. I think everybody else in the sales department helped to go around and see them.

Q. Whom did you call on, Mr. Aitchison?

Mr. Keele: I do not think that is proper.

Mr. Swiren: We object to that.

Mr. Walsh: I do not mean to find out who your customers are.

2374 Mr. Swiren: We do not want Mr. Collins and his C. I. O. to try boycotting them. That probably is the idea.

Mr. Walsh: What I want to find out—

Mr. Swiren: Of course, the law would not boycott the C. I. O. at all.

Mr. Collins: I do not think it bothered the Fansteel Corporation very much.

Mr. Walsh: I move that all of this acrimonious discussion between counsel go out of the record.

Trial Examiner Dudley: What is the basis of the objection?

Mr. Swiren: I do not think it has any pertinency one way or the other, as to who their customers were.

Mr. Walsh: I will reframe it.

Mr. Swiren: Reframe it so as to say "outside of the state" or something like that. That is what you are interested in, is it not, Mr. Walsh?

Q. (By Mr. Walsh.) Many of these customers upon whom you called were ouside of Illinois, were they not?

A. Yes.

Mr. Walsh: That is what I wanted to get.

Mr. Swiren: There is no objection to that.

Mr. Walsh: I do not care who his customers are.

Q. (By Mr. Walsh.) They were located in many 2375 states, were they not?

A. Yes—well, what do you mean by "many"? A dozen?

Q. More than one.

A. Yes, a dozen.

Q. They were in a dozen states?

A. Yes.

Q. Now, going to this estimate of your damage, you did not give us any estimate of the damage of this various litigation—or rather, the cost of the various litigation. Do you care to make a speculation as to how much more that would be?

Mr. Swiren: We object to that unless it is limited to the litigation in connection with the return of the buildings. We have not any objection to that. That is the only pertinent question here.

Mr. Walsh: If you are going to put it in, the tail ought to go with the hide. You ought to tell the whole story.

Mr. Swiren: The whole story is the cost to the company of getting back the buildings.

Mr. Walsh: I do not think that is—

Mr. Swiren: The only question involved here is the cost to the company of getting back the buildings that were illegally seized. We are making no complaint with respect to the cost of the Labor Board hearing, or such expense as that. I do not think that is pertinent.

Trial Examiner Dudley: I will sustain the objection.

2376 Mr. Walsh: All right. Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Swiren: You asked about the entire cost of litigation. You excluded nothing. As to that portion other than that which was incurred trying to obtain possession of the buildings from the men, the objection was sustained.

That leaves a portion of the question, if you want to proceed on that.

Trial Examiner Dudley: The question would be then: what is the attorney's bill for handling the suit in the Circuit Court?

Mr. Swiren: That is not the question; it should be just the cost generally.

Mr. Keele: That would be only a portion of the cost.

Mr. Walsh: It is not important for me to press the point.

Q. (By Mr. Walsh.) There was a considerable expense, I expect, was there not?

A. (No answer.)

Mr. Walsh: The witness nodded his head "Yes".

Mr. Keele: We saw to that.

Mr. Walsh: I imagine so.

Q. (By Mr. Walsh.) Now, refer to exhibit No. 25, Mr. Aitchison.

2377 A. Yes.

Q. I presume you are not familiar with the figures there yourself reflecting the employes, are you?

A. They were put together by the Cost Department after I told them what to do. Then, when I did not get what I wanted, I told them to do it again.

Q. What I want to do is get the best information I can. I just suspected that you would not be able to give me the information I want. It would be reflected by your records, and I assume that some one more intimately familiar with the records would be able to tell me.

Assume that I took the application you filled out for membership in the Metal Trades Association, and examined you on each one of those various classifications, could you tell me the number of employes you had on September 10th, September 21st, and September 17th?

A. No.

Q. I did not think you could.

A. No.

Q. There is no use of going into that with you, when some other person would know that.

A. No.

Mr. Swiren: If you will tell us what you want with respect to that, we will take it out of the records, and give it to you.

2378 Mr. Walsh: Could you do this for me, then: the application that you filed when you applied for membership in the Metal Trades Association—

Mr. Swiren: This does not have to be in the record.

Mr. Walsh: No.

Mr. Swiren: Do not put this in the record, Mr. Reporter.

(Discussions outside the record.)

Mr. Walsh: Will you mark this Board's exhibit No. 36, please, Mr. Reporter.

(The document referred to was marked Board's Exhibit No. 36 for identification.)

Q. (By Mr. Walsh.) Mr. Aitchison, I now hand you what has been marked Board's exhibit No. 36 for identification.

A. Yes.

Q. This is a document which has been prepared by your counsel, and handed to me. It is entitled "Range of Pay of Employes of Fansteel Metallurgical Corporation." It does not appear to have any date on it.

Do you know whether that is the wage range in effect now?

A. Yes.

Q. That is, at this time?

A. Yes.

Q. All right.

2379 A. That is of this time, yes.

Mr. Walsh: I would like to offer that in evidence as BOARD'S EXHIBIT NO. 36.

Mr. Swiren: We object. We cannot see that the wage range has any materiality to any of the issues here.

I do not know of any issue in this case that is even remotely connected with it.

Trial Examiner Dudley: Your objection is to the immateriality of it?

Mr. Swiren: Yes.

Trial Examiner Dudley: Objection overruled. It may be admitted.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 36.)

The Witness: This is the thing you asked us to get, is it not?

Mr. Swiren: Yes.

Mr. Walsh: Yes.

The Witness: That is right.

Trial Examiner Dudley: Proceed.

Q. (By Mr. Walsh.) Do you have any insurance against labor difficulties?

A. We have use and equipment insurance and riot and civil commotion.

Q. I will ask you whether you made a recovery of

2380 any of your expenses or losses on your insurance policies?

A. So far we have made no recovery.

Q. You have made the proper claims, and filed proofs?

A. I do not think a claim has been filed. There have been more discussions, than anything else. Every 30 days they give us another 30 days, so they can think up what they do with sitdown strikes.

Q. They are reading the fine print in the policy to see whether they owe you anything or not, is that it?

A. We read it too. We have a different opinion, of course.

Q. You are taking steps to protect your rights on those things?

A. Yes. It will be a precedent in the United States, so they are moving slowly, and we are satisfied with it.

Q. When did you take that policy out, do you remember?

A. More than a year before the trouble. I had some insurance counsellors in Chicago go over all of our insurance. All the insurance we carried was in a blanket form, and I wondered if we really had—

Q. The proper coverage?

A. The proper coverage.

Q. Yes.

A. I do not think that any of the men in our office, although they know something about insurance, are experts at it. At that time, they worked out a comprehensive
2381 schedule of changes in policies reading in blanket form. They suggested some insurance we did not carry that they thought we should.

They pointed out the inadequacy of use and equipment insurance if we had any kind of a—

Q. Fire.

A. Fire.

Q. Yes.

A. They also worked out a proposition whereby if we took their recommendations on a five-year basis, paying for it five years in advance, the additional cost to get maximum coverage would only be a very small amount each year, $500 or $600 a year.

At that time we revised the whole structure.

Q. You prepay your insurance?

A. We pay it on a five-year basis. I think the policies are actually issued early in March, 1936.

Q. Yes. That was part of the general revamping?

A. That included coverage in case one of those student airplanes across the street dropped on the building. It is a hazard, Mr. Walsh, in the sense that you have to sue the United States Government for that damage.

An airplane dropped on the main field once, just 100 feet or 200 feet across the tracks. I have often said that if one of them is going to fall, I hope they let me pick the build-
2382 ing it is going to fall into.

Mr. Walsh: I think I have no further questions at this time—just a moment.

Q. (By Mr. Walsh). After the plant reopened, do you know whether or not a man by the name of Pixley was engaged to interview applicants?

A. Pixley?

Q. Yes.

A. No.

Mr. Anselm: What was that name?

The Witness: Pixley?

Mr. Walsh: Pixley.

Mr. Anselm: I never heard of the man.

The Witness: I did not either.

Mr. Walsh: All right. That is all.

Mr. Keele: I have just one more question.

Redirect Examination.

Q. (By Mr. Keele.) Mr. Aitchison, when you were talking with Mr. Anselm with reference to re-staffing the plant, and you told him to get a crew together, did you give him any instructions with reference to whether or not there was to be any discrimination as between members of Lodge 66 and men who were not members of it?

A. Absolutely none.

Q. Insofar as you know, was any discrimination 2383 practiced with reference to that?

A. No. We have a number of those men back at work.

Q. 62 of these men were members of Lodge 66, were they not?

A. According to the cards as we saw them the other day, yes.

Q. That is one way—

A. That is how I know it, today. I did not know it at the time. There was no discrimination.

Q. In rebuilding the crew or personnel of the plant, you needed some new employes, did you not?

A. Yes, sir.

Q. One very notable instance of that was the question of substituting women for men in the contact department?

A. That is right, and the grinding department.

Q. You did not make any arrangement for temporary employes, for those people who came in to do that work, did you; you hired them as permanent employes, did you not?

A. Oh, yes. We took them on and if they made good in a week or two weeks, it was steady employment.

Q. You expected to continue to employ those people?

A. Yes.

Q. So long as they did the work?

A. Yes.

Q. And the employes understood if they made good in the job they were to stay on?

A. Yes, sir.

2384 Mr. Keele: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: I would like to ask you a few questions.

The Witness: Yes.

Examination by Trial Examiner Dudley.

Q. (Trial Examiner Dudley.) You testified back on the first day of our hearing, I believe, and you testified also today regarding the reopening of the plant.

Could you tell me what went on with regard to the different stages of reopening from February 26th when you got control of the plant until March 12th when you testified you were fully manned?

A. Well, the steps that were—

Q. Did you, for example, get any work done in the plant during the week that included the 26th?

A. Well, the 26th was Friday, was it not?

Mr. Anselm: That was Friday.

The Witness: I think on Saturday we had all of the foreman and a few men in there, just cleaning up. Then on Monday we also bought the glass. On Monday we had about 20 men from the Waukegan Glass Company, A. F. of L. Craftsmen take over the contract to put in the glass.

We hired Ball and Rectenwald to do all the sash work and the fitting.

2385 Q. (By Trial Examiner Dudley.) That was on March 1st.

A. Yes. We had Killian in there to do the steamfitting.

Q. About what time did they get the glass in?

A. In three or four days.

Q. That would be March 3rd, 4th, or 5th?

A. Yes.

Q. Yes.

A. We started some ore in process in the Chemical Building. We started the sintering furnaces one at a time.

Q. When did they get started?

A. I think they were going perhaps about the 1st or 2nd of March. When we first started to operate the furnaces, we started to operate them by laboratory people. We took men out of the laboratory to get the furnaces running, to get the bars in.

One by one, as we put men on, we put the laboratory people back in the laboratory.

Q. Do you know how many people you had working on March 1st?

A. May I ask Mr. Anselm something?

Trial Examiner Dudley: Yes.

The Witness: He wants to know how many employes we had on the 1st of March.

Mr. Anselm: What was the question?

The Witness: How many employes did the company 2386 have on the 1st of March. That was Monday, was it not?

Tuesday was the 2nd, was it not.

Trial Examiner Dudley: Monday was the 1st.

Mr. Anselm: We had the foremen and a few others.

The Witness: It was not over 20, was it?

Mr. Anselm: Oh, yes. It would be 35 or 40.

The Witness: It would be 35 or 40.

Q. (By Trial Examiner Dudley.) How many did you have on March 3rd? I just want to get a picture of your pick-up.

Mr. Keele: May I say that Mr. Anselm will be the next witness, and I think he can give you that in more detail. I think he knows that a little more in detail than Mr. Aitchison.

Trial Examiner Dudley: Then, I will ask Mr. Anselm about that.

The Witness: He knows that better than I do.

Trial Examiner Dudley: I would like to ask you one more question.

Q. (By Trial Examiner Dudley.) How many employes do you have now?

A. There are 391 including 61 with Vascoloy Ramet.

Mr. Walsh: 81 was that?

The Witness: No. 81 is with the bottom group here, you see.

Mr. Walsh: I see.

2387 The Witness: There are 10 Vascoloy Ramet administratives and 51. The total is 391 on June 11th.

Q. (By Trial Examiner Dudley.) That is, 391 on June 11th, including Vascoloy Ramet?

A. Yes. That is on this exhibit 25, where we broke it down. That is the total.

Q. That is the total?

A. Yes. There is the breakdown.

Q. Have you let anybody out since this hearing started?

A. I did not. I do not know what the shop men did.

Mr. Anselm: Since the hearing started?

The Witness: They did not let anybody out, did they?

Mr. Anselm: I do not think so.

Q. (By Trial Examiner Dudley.) On June 10th, did you testify there were 410, or is that not correct?

A. That is what I thought it was. Here it says 391 on June 11th.

Q. Which is right?

A. I guess 391 is right, because it came off the cards. The 410 was conversation to me.

Mr. Walsh: Then, you would like to have the record show that your testimony is to be corrected?

The Witness: I would like to say that it appears on the payroll this way.

Q. (By Trial Examiner Dudley.) The 391 includes

2388 10 from Vascoloy Ramet?

Mr. Swiren: 61.

The Witness: 61.

Mr. Walsh: 61.

The Witness: That is right here (indicating).

Q. (By Trial Examiner Dudley.) You will have to subtract 61 from 391—

A. To get Fansteel.

Q. —to get the number of the Fansteel employes?

A. That is right.

Q. Then, there are 330 employes at Fansteel now?

A. That would be correct.

Q. That includes—

A. That was on the 11th. Have we taken on anybody since the 11th?

Mr. Anselm: What?

The Witness: Have we taken on some more employes?

Mr. Anselm: Since what date?

The Witnesss: Since the 11th.

Mr. Anselm: I would not know that; possibly one or two.
The Witness: Just one or two.
Q. (By Trial Examiner Dudley.) Does this include supervisors and clerical help?
A. It is all in there.
Q. And administrative people?
2389 A. Yes.
Q. That is the grand total?
A. Yes. It does not include agents or anything like that. As I said, we dealt through agents in New York and Cleveland.
Q. This is the total number of employes?
A. Yes.
Q. Do you know how many girls you had before and after the strike, and about how many men you had before and after the strike, or would Mr. Anselm know that better than you do?
A. I think Mr. Anselm would know that better than I do. I think we had 54 girls at the time of the strike.
Mr. Anselm: 55.
The Witness: I do not know what it was.
Trial Examiner Dudley: I will reserve that for Mr. Anselm.
Q. (By trial Examiner Dudley.) What wages were these girls getting that you hired?
A. They started out at 40, did they not?
Mr. Anselm: 40, yes.
The Witness: They started out at 40.
Mr. Anselm: If we kept them, after 30 days, they got a raise.
Q. (By Trial Examiner Dudley.) Would Mr. Anselm know more about that than you do?
2390 A. Yes.
Q. I will ask him that, then.
A. All right.
Q. I have one other question.
In regard to this exhibit, referring to exhibit No. 20, I think you told us, but will you tell me again who the three men are on this list who were retained?
A. These three (indicating).
Q. The last three, you mean?
A. Smith, Kuszewski and Verenski.
Q. Smith, Kuszewski and Verenski?
A. Yes.

Q. And they do what kind of work now?
A. Grinding. They used to be cutters.
Mr. Anselm: Kuszewski works in the Chemical Building now.
The Witness: Kuszewski works in the Chemical Building?
Mr. Anselm: Yes.
Mr. Swiren: I think he testified there were six retained.
Trial Examiner Dudley: Six?
The Witness: Three grinders and three cutters.
Mr. Walsh: He is talking about cutters now.
The Witness: Judge Dudley asked me about cutters.
Trial Examiner Dudley: All right.
2391 Mr. Swiren: He was talking about the whole sheet.
Trial Examiner Dudley: That apparently refers to the whole sheet.
Mr. Swiren: Yes.
The Witness: No, this refers to cutters. Van Treeck is working there. These fellows are there too. Frank Nickoley is there, and so is Kuszewski.
Q. (By Trial Examiner Dudley.) The last three grinders, and the last three cutters are employed by the company now?
A. These men were grinders here, were they not?
Mr. Anselm: I am not sure about—
The Witnesss: They were cutter, were they not?
Mr. Anselm: Orlin Swanson was a cutter. These men were never cutters here (indicating).
The Witness: They were grinders.
Q. (By Trial Examiner Dudley.) What are they working at now?
A. Van Treeck—
Mr. Walsh: What does Verenski do, grinding?
Mr. Anselm: They do heavier jobs.
Trial Examiner Dudley: Mr. Reporter, this does not need to be in the record.
(Discussion outside the record.)
Mr. Walsh: Let me ask this question—well, I will ask it of Mr. Anselm.
2392 Q. (By Trial Examiner Dudley.) Referring to exhibit No. 23 now, exhibit No. 23 indicates that the total number of jobs in the Maintenance Department was reduced from 14 to 4 men.
A. Yes.
Q. Now, you say 4 men were retained?
A. They are not any of these.

Q. They are not any of those people?
A. No.
Q. Let me ask you this: are all of the men listed on your exhibit 23 now not employed by the company?
A. They are not employed.
Q. None of them are employed.
A. No.
Q. The four men who are now working in what you might call the Maintenance Department that were mentioned in exhibit No. 23 are new employes or old employes, which?
A. We had a major job in the office—
Q. Were these four men hired or employed by the respondent before the strike?
A. No. We let these jobs out on contract, you see. At the same time we had this maintenance crew, we let jobs out. One of these men was in charge of—
Q. You testified before that you have no one doing maintenance work outside of the work you let out by contract, except one carpenter, one electrician and two helpers.
2393 A. Yes.
Q. Were those men employed by the respondent before the strike?
A. No, sir.
Q. Refer to exhibit No. 24, please.
A. Yes.
Q. I want to verify what the exhibit states. Is it true that none of the men listed in exhibit No. 24 were employed after the strike?
A. None of them have come back.
Q. All of these men were employes before the strike?
A. Yes, sir.
Q. They are not employes now?
A. That is right.
Trial Examiner Dudley: I think that straightens it out.
Mr. Keele: I have just one more question.
Q. (By Mr. Keele.) With reference to the men in the maintenance department, you said that the four men now in the department, or doing that work, have been employed by the company as employes.
However, one of these men at least had been hired by the company, or had worked for the company as a contractor, or had worked for a contractor?
A. Yes. He was in charge of the job we let out for the office.

2394 Q. He was employed by an independent contractor?
A. He was employed by an independent contractor.
Q. The record he made was such that you wished to have him in your employ?
A. I will tell the world it was. It was a good one.
Q. I have one other question.
A. All right.
Q. I understood you to say that there are more employees now than there were in February, 1937. Is that correct?
A. That is right.
Q. Has the production of the company increased since 1937?
A. Yes, and the business has increased.
Q. Materially?
A. Yes, sir.
Mr. Keele: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Trial Examiner Dudley: We will take a recess at this time until 1:30.
(Whereupon, at 12:00 noon a recess was taken until 1:30 o'clock p. m.)
After recess.
(The hearing was resumed at 1:30 o'clock p. m. pursuant to recess.)
2395 Trial Examiner Dudley: I will call the hearing to order. You may proceed.
Mr. Swiren: If the Examiner please, I want to call attention to the fact that we have served a copy of the amendment to the answer on Mr. Collins on behalf of Lodge 66, who has accepted that service.
Is that right, Mr. Collins?
Mr. Collins: Yes. That is O. K.
Mr. Swiren: I would like to offer in evidence at this time respondent's exhibits 26, 27, 28 and 29.
Mr. Walsh: I am objecting to them on the ground of immateriality.
Trial Examiner Dudley: Objection overruled. They may be admitted.
(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 26, 27, 28 and 29.)
Mr. Keele: Mr. Anselm take the stand, please.

A. J. ANSELM, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) Mr. Anselm, you have testified before in this hearing?

A. I have.

Q. Directing your attention to about the time the men were evicted from buildings 3 and 5 on February 26th,
2396 did you have any conversation with Mr. Aitchison with reference to the rehabilitation of the factory at that time?

A. Yes, I did.

Q. Where and when did that take place?

A. It took place in his office.

Q. About when?

A. About the 27th or 28th of February.

Q. All right. Just what was the substance of that conversation?

A. Well, he told me to go down and build a new organization, taking back any men I saw fit.

Q. Did he discuss ways and means of doing it?

A. Well—

Q. Did he tell you whether or not you were to issue a general call, or send out men?

A. No. He told me I should do as I saw fit.

Q. He gave you full responsibility, is that correct?

A. He did.

Q. Did he give you any instructions with reference to the employing of men who were union men, or otherwise?

A. No instructions.

Q. Was that discussed?

A. It was never discussed.

Q. All right. What did you do after your conversation with him?

2397 A. I believe it was the following Monday morning, March 1st—I think that is the correct date—I called all the foremen, and I told them we had a badly wrecked plant, and laid out a plan of procedure for rehabilitating that plant. I told them I would depend upon their recommendations to a great extent in reemploying men, and they could recommend employes regardles of any union affiliation. We proceeded on that basis.

The foremen went out after several of their key men, and some they succeeded in getting, and others did not come back.

They got the key men into the plant, and they started cleaning up the plant. We had an outside contractor come in to replace the glass, and help clean up.

Q. Let me interrupt you and ask you whether or not in your talks with the foremen, you told them whether or not there was any condition attached to the reemployment of the men?

A. There were no conditions attached to reemployment.

Q. Did you tell the foremen to hire them, or to send them in to you first?

A. I believe I told them to send most of them in to me.

Q. Did you in any instance refuse or fail to employ anyone sent in by the foremen with their reccomendation?

A. I did not.

I employed practically everybody that came back.

2398 Q. Had you had any discussion prior to February 17th, 1937 with reference to the abolishing of certain departments?

A. Yes. I talked that over with Mr. Aitchison.

Q. What was the substance of that discussion?

A. Well, one department in particular, the maintenance department—I recommended that we do away with it and substitute private contractors.

We also talked over the question of substituting girls in our cutting department, to do grindings and a number of other jobs, so as to get in line with our competitors.

Q. What about your tool room?

A. As to our tool room, we decided that inasmuch as we made large quantites of dies, Torrington swagers, we should move into a shop that had production machinery for those dies.

We later did have those dies made by an outside tool shop.

Q. At the time you talked with Mr. Aitchison with reference to the re-staffing of the plant, was there any discussion with reference to the things about which you have just spoken, or along the lines you have just testified?

Was it discussed as to what you were going to do?

A. Yes. It was decided, inasmuch as were were going to drop the maintenance department, we did not need a maintenance foreman. That was one of the phases we discussed.

Q. Did you determine whether or not you were at
2399 that time going to abolish the maintenance department?

A. It was finally determined, on the 25th,I believe, of February, that we would do away with it.

Q. That is while the men were still in the buildings?

A. That is right.

Q. What was the case with reference to the tool room?

A. As to the tool department, we decided to get along with a skeleton force, enough to keep up our repairs.

Q. What about the contact department, the cutting, grinding and so forth?

A. In the cutting department we decided to substitute girls for men. It really takes a girl's touch. We did do that after the evacuation of the plant.

The same procedure was carried out on our grinders.

Q. Now, Mr. Anselm—

A. (Continuing) —and I believe on two spinning machines.

Mr. Walsh: What was that last answer?

Mr. Swiren: "On two spinning machines."

The Witness: On two spinning machines.

Mr. Walsh: All right.

Q. (By Mr. Keele.) I now hand you respondent's exhibit No. 20 which purports to be a list of men replaced by women employes in the grinding department, the spinning department, and the cutting department of the contact department.

Will you indicate which of these men, if any, were
2400 retained?

Mr. Swiren: And what they are doing now?

The Witness: We retained Stanley Janis. He is on his old job, grinding contacts. He grinds heavier and more complicated ones.

William Van Treeck is setting up the jobs for the girl grinders. His former job was grinding.

Frank Kuszewski—is that the way you pronounce it?

Mr. Swiren: Spell it for the reporter.

The Witness: K-u-s-z-e-w-s-k-i. He is stamping and repairing. I believe that was his old job.

Frank Nickoley is on his old job of drilling carbon jigs.

Under cutters, we have taken back three. Charles Smith, who is a former cutter, and did a little instructing of new girls, is in the Northrup furnace department. Orlin Swanson was one of the old cutters. He is now in the Chemical Building.

Stanley Verenski; his old job was plating. He is now back on the job.

Q. (By Mr. Keele.) Mr. Anselm, what is the fact with reference to the rehiring of men who were in the buildings during that period from February 17th to February 26th, who applied?

A. They were rehired if they applied for their jobs, and their foremen approved of their work.

I talked with them, and if I thought they were all
2401 right, and they would make good in the new picture, I hired them.

Q. Were there any men who were not rehired who applied for jobs that had been in the sitdown?

A. I believe there were three. One was Joe Petraitis. I explained to him that his work was now being done in an outside tool shop, and his job was abolished.

The other gentlemen who applied I believe, were Mr. Aigner and Mr. Hoff.

Q. Was Aigner rehired?

A. No. They were not rehired. Their foremen asked for younger men.

Q. How old was Aigner?

A. He must be in his seventies, somewhere. Mr. Hoff was seventy-four.

Q. Why was he not rehired? Why was not Aigner rehired?

A. His foreman asked for a younger man.

Q. As a matter of fact, Aigner was really a pensioner around there, was he not?

A. Yes. He is not an old man in point of years. He was hired in recent years.

Q. You say he was not an old man in point of years?

A. No.

Q. He had not been with the company a great while?

A. No.

Q. What did his job consist of?

2402 A. One was a sweeper. The other, I believe, was tool crib attendant. Mr. Hoff was tool crib attendant.

Q. How old was Mr. Hoff?

A. 74.

Q. Did you have any other man to your knowledge, in the plant doing labor who was 74 years old?

A. No.

Q. Did you have anyone else in the plant 74 years old doing labor?

A. No.

Q. What about Ed Ruck?

A. Ed Ruck applied for work and told me he was through with the C. I. O., and had resigned as an officer of the union. I told him that did not make any difference to me, whether he was through with the C. I. O. or not. I told him I was not interested in the C. I. O. "Well" he said, "I want to come back." I says, "Well, Ed, you have applied too late. I have got a good man on your job now. But I will tell you what I will do with you. I will find you a job in Chicago, if you want it."

I proceeded to do that. I got the information back to Ed Ruck, as to where he could get this job. Whether or not he took it, I do not know.

Q. When did he apply for employment?

A. About the 15th of April.

2403 Q. I see. The plant had then been in full operation for over a month, is that correct?

A. Just about a month.

Q. Now, those four men that we have just mentioned, Aigner, Hoff, Petraitis and Ruck were all in the sit-down, were they not?

A. They were—no. Hoff was not in the sit-down.

Q. Hoff was not?

A. No.

Q. The other three were?

A. Yes.

Q. Now, aside from these four men, or these three men and Hoff, every man who was in the sit-down who applied for re-employment was rehired, was he not?

A. That is my belief. I interviewed a great many men.

Q. How many men does that make who applied for re-employment and were rehired by the company who had been in the sit-down?

A. At least 37.

Q. Were any limtiations or conditions placed upon the men who came back and asked for re-employment who had been in the sit-down?

A. None whatever.

Q. That is, limitations with respect to re-employment?

A. None whatever.

Q. Now, Art Holm, Sr. was foreman of the mainte-
2404 nance department up until February 25th, was he not?

A. That is correct.

Q. On the 25th of February a letter was written to him advising him of his discharge as of that date, is that correct?

A. That is correct.

Q. Will you tell us why Art Holm was discharged?

A. That particular day was selected—

Q. I refer to Art Holm, Sr.

A. That particular day was selected because Mr. Aitchison and I decided we would no longer have a millwright department.

Q. What do you mean by "millwright department"?

A. Or a maintenance department.

Q. He was the foreman of that department?

A. He was. We no longer needed a foreman.

Q. Were there any other reasons that entered into his discharge?

A. Yes, quite a number.

Q. State them, if you will.

A. Well, written orders were given to him, and they were neglected.

Q. All right. What else?

A. Some of them were of an emergency nature.

Q. Some of them were what?

A. Some of them were of an emergency nature.

Mr. Keele: Just a moment, now, while I have these marked.

2405 Mr. Swiren: You had better have this pink group marked as one exhibit, with sub-letters.

Mr. Keele: All right. Mark this Respondent's Exhibit No. 30, Sub-letters A to G both inclusive.

(The documents were marked Respondent's Exhibit No. 30, Sub A to G, both inclusive, for identification.)

Mr. Keele: Now, will you mark these Respondent's Exhibits Nos. 31, 32 and 33, please, Mr. Reporter.

(The documents referred to were marked Respondent's Exhibits Nos. 31, 32 and 33, for identification.)

Q. (By Mr. Keele.) I hand you what has been marked Respondent's Exhibit No. 33 for identification, Mr. Anselm.

A. Yes.

Q. I will ask you what that exhibit is.

A. That is a written instruction to use a new form for reporting labor on the various jobs.

Q. To whom was the order directed?

A. The order is directed to Holm.

Q. By whom is the order signed?
A. I signed it.
Q. As of what date?
A. December 9, 1936.
Q. All right. Did Mr. Holm comply with that order?
A. He did, for five days.
2406 Q. After which, what happened?
A. After which he neglected to do as that order directed.
Q. Now, I hand you what has been marked Respondent's Exhibit No. 31 for identification.
A. Yes.
Q. I will ask you what that exhibit is.
A. That is an order to make a move in the tantalum fabrication department over the weekend. It orders him further to put enough men on that job to complete it before the following Monday morning.
Q. To whom was the order addressed?
A. That order is directed to Holm.
Q. By whom is it signed?
A. I signed it.
Q. You were plant superintendent—
A. I was.
Q. —at the time these orders were signed?
A. I was.
Q. What date is that order signed?
A. That order is dated October 15th, 1936.
Q. All right. Did he comply with that order?
A. He got the job 50 per cent done. In my opinion that job could have been easily done over that period.
Q. I show you what has been marked Respondent's Exhibit No. 32 for identification.
2407 A. Yes.
Q. I will ask you what that is?
A. A general order.
Q. I beg your pardon.
A. You gave me the wrong order. It was the one ahead of that.
Mr. Keele: I will withdraw the question with reference to Respondent's Exhibit No. 32. Mark this Respondent's Exhibit No. 34 for identification, Mr. Reporter.
(The document referred to was marked Respondent's Exhibit No. 34 for identification.)

Q. (By Mr. Keele.) Mr. Anselm, I show you what has been marked Respondent's Exhibit No. 34 for identification.
A. Yes.
Q. I will ask you what that exhibit is.
A. That lists a number of jobs to be done.
Q. To whom is the order directed?
A. It is directed to Holm.
Q. It is signed by whom?
A. I signed it.
Q. As of what date?
A. As of October 7th, 1936.
Q. At which time you held the position of what?
A. Plant superintendent.
2408 Q. All right. What, among other things, does that order direct Holm to do?
A. It directs him to install suitable insulation in the die polishing room, under carpenter work, and also under the same title, Item 4, it directs him to repair the skylight in building 6.
It was to be finished in the month of October.
Q. With reference to the first part of the order which has to do with the installing of suitable insulation in the die polishing room, the order was given on October 7th, to be done in the month of October?
A. Yes.
Q. When, if ever, was it completed?
A. As to the skylight, it was never completed. After the evacuation of the employees from the plant, we called in a contractor and he finished the job, or he did the job.
Q. What about the installation of the insulation?
A. I would judge that he had that about three-fourths of the way along on February 17th, 1937.
Q. In other words, so long as he was employed by the company, he never did finish that job, or see that it was finished?
A. No. He did not finish either job.
Q. Did he ever discuss with you the question of delaying, or the problem of delaying the work on these two jobs?
A. The items pointed out there were jobs to be
2409 done without delay.
Q. Did he ever get permission to delay the work on them?
A. He never did.

Q. I will show you Respondent's Exhibit No. 30—
Mr. Swiren: Wait a minute.
Mr. Keele: I will withdraw that question with reference to Exhibit No. 30.
Q. (By Mr. Keele.) I will show you Respondent's Exhibit No. 32.
A. Yes.
Q. I will ask you of what that consist?
A. What it says?
Q. What is it, an order, or a memorandum, or what?
A. No. This in an order.
Q. To whom?
A. To Holm.
Q. From whom?
A. Myself.
Q. Is it signed by you?
A. It is signed by me.
Q. As of what date?
A. November 23rd.
Q. You were plant superintendent at that time?
A. I was.
Q. What does it order Holm to do?
2410 A. It calls his attention to Items 3 and 4 listed under building 6, that he was instructed to do during the month of October.
Q. In other words, it refers back to Respondent's Exhibit No. 34, does it not?
A. That is correct.
Q. It calls his attention to the orders that were given him in Respondent's Exhibit No. 34?
A. That is correct.
Q. What does it say? Will you just read what it does say with reference to those items, 3 and 4?
A. "I am calling your attention to Items 3 and 4 listed under building 6. You were instructed to do this work during the month of October."
Now, Item 3 is to repair the skylight in building 6, and item 4 is to insulate the die polishing room. It further states that the room is too cold. This is on November the 23rd.
Q. That was a month and a half after the previous order of October 7th?
A. That is right.
Q. What did Holm do about it then?
A. Well, he didn't do anything about the skylight.

Q. What did he do about the insulation?

A. He did some work on that.

2411 Q. Did he ever make any explanation for his failure to finish those jobs as ordered?

A. Yes. He said he had his carpenters busy over in the carpenter shop. I checked that up, and found that the carpenters were working on tables and benches that we would not need for several weeks to come.

Q. I show you Respondent's Exhibit No. 30 consisting of seven slips of paper.

A. Yes.

Q. I will ask you if you will examine that exhibit and tell us what those various sheets of paper are. What are they, Mr. Anselm?

A. That is a factory work order. (Indicating.)

Q. Directing your attention to Respondent's Exhibit No. 30-A, will you state what that is?

A. That order is in my own handwriting, and was written up February 11th. It instructs Holm to tighten up, either by calking or installing a deflector inside of certain windows in the contact department. It says "The girls are complaining of this location being too cold to work, while the center of the room is too hot. This work to be done at once."

Q. All right. Directing your atttention to Respondent's Exhibit 30-A, tell us what that is?

A. That is dated 1/25/36. It directs Mr. Holm to install a new rubber ring in the dry pipe valve in building 11.

2412 It was never installed.

Q. I direct your attention to Respondent's Exhibit No. 30-C. Will you tell us what that is?

A. It calls for a partition in the basement between the cleaning unit and the centerless grinder.

Q. Directing your attention to Respondent's Exhibit No. 30-D, Mr. Anselm, I will ask you what that is?

A. That calls for a wash-bowl in the toilet room in building 5, on the first floor, to remove one toilet, and other work.

Q. What date was that given?

A. June 20th, 1936.

Q. Directing your attention to Exhibit No. 30-E, Mr. Anselm, will you tell us what that is?

A. That calls for a change of pulley on the big grinder in the basement.

Q. On what date was that order given?

A. September 1, 1936.

Q. I direct your attention to Respondent's Exhibit No. 30-F; what does that show?

Mr. Walsh: Pardon me, just a moment.

Mr. Keele: Yes.

Mr. Walsh: Was that September 1, 1937?

The Witness: 1936.

Mr. Walsh: Who wrote that order?

2413 The Witness: Luther Henry.

Mr. Walsh: All right.

Q. (By Mr. Keele) Do you know his handwriting?

A. Yes.

Q. What position did he occupy at that time?

A. Assistant superintendent, or superintendent.

Q. Directing your attention to Respondent's Exhibit No. 30-F, will you tell us what that is?

A. It calls for six braces or supports for water jackets on furnaces.

Q. Who signed that order?

A. Mr. Dow signed that order.

Q. He was then factory superintendent?

A. He was.

Q. That was January 15, 1936?

A. That is right.

Q. Directing your attention to Respondent's Exhibit No. 30-G, Mr. Anselm, tell us what that is?

A. That is an order to Holm, directing him to repair three steam lines that were leaking badly, and to install a new door at the fire escape exit on the fourth floor of building 5.

Q. That is dated when?

A. That is dated 2/11/37.

Q. Now, were all of these orders directed to Holm?

2414 A. They were.

Q. Was the work to be done, or called for in the orders, in the department in which—of which Holm was in charge?

In other words, was it work that was ordinarly done by Holm's department?

A. It was.

Q. The maintenance department?

A. Yes.

Q. Was the work on any of these orders ever done?

A. No, it was not. These orders I got out of Holm's desk.

Q. After his discharge?

A. That is correct.

Q. Now, at the time of that discharge, did you know whether or not these jobs had been done?

A. I knew that this one that I had written the order out on myself had not been done.

Q. You knew of that then? Did you know on February 25th or at any time prior thereto whether or not Holm had been neglecting his work, or his jobs?

A. I did not think he was giving his job the attention it should have.

Q. Were there any other objections to Holm as an employee, or as a foreman?

A. Well, we did not like the fact that he had master keys made on the outside. Those master keys are to be pur-
2415 chased by the company, and issued to one or two confidential employees. It so happened he was entrusted with one.

Q. What did you find?

A. I found when he called for his pay he turned in a foreign master key that he had made elsewhere, without authority.

Q. What explanation did he make of that?

A. "Oh", he said, "I lost the master key that was issued to me by the company. I went uptown and had another one made. For the purpose of getting it made, I borrowed a key from Mr. Nelson."

Inquiry of Mr. Nelson developed that he had not borrowed any key.

Q. Were there any other objections to Mr. Holm as an employee of the company?

A. Well, one thing I did not like happened when we were installing a hydrofluoric tank. We were anxious to get it in. We had a crane on the sidetrack.

The hold-down broke on the crane, and it was in danger of tipping over and wrecking our tank and doing general damage. At that time Carl Swanson who was Mr. Holm's assistant was directing a crew operating a chain fall. Holm got in his way, so Swanson said to get the hell out of his way, and strange as it may seem, Holm did.

Q. What about Holm's manner? I mean by that, what was his general attitude or behavior?

2416 A. Oh, I don't care about that. I can get along with a man, even if he is a sourpuss, if he does his work all right.

Q. Was he cooperative? Did he show any spirit of cooperation, or desire to cooperate, or was he cantankerous and insubordinate?

Tell us the facts with reference to that, as you found them.

A. I do not believe I care to add any more facts. I do not want to go into his private life. I do not think it belong in this hearing.

Mr. Walsh: Then I will object to it.

The Witness: Yes. You go ahead.

Q. (By Mr. Keele) Were there any other instances of inattention to work or his duty as an employee?

A. No. That is enough to get a foreman discharged about twenty times. The reason why I did not discharge him was I was looking around for a place in the watchmen's staff where I could put him, so he could have a job to round out his years in.

Q. Was that because he was an old employee, and had been there a good many years?

A. Well, yes. He had been there quite a number of years. He was a very good man in the early part of his service with the company.

Q. In other words, he had gotten to the point where 2417 he was practically a pensioner, the same as Aigner?

A. He practically had outlived his usefulness as a foreman.

Q. Is there any foreman—or rather, have you a maintenance department? I will put it that way. Have you a maintenance department at the present time?

A. Not as such.

Q. You have four men, an electrician, a carpenter, and two helpers?

A. A helper for each of the two.

Q. You have no foreman in that department?

A. We are not going to have any foreman.

Q. There is no need for a foreman?

A. We have no need for a foreman.

Q. How old a man is Art Holm, Sr.?

A. 61, or 62.

Mr. Keele: Will you mark this Respondent's Exhibit No. 35 for identification.

(The document referred to was marked Respondent's Exhibit No. 35 for identification.)

Q. (By Mr. Keele) By the way, with reference to Art

Holm, Sr., did you know on February 25th whether or not he was a member of Lodge 66?

A. I did not.

Q. According to your information was he eligible
2418 for membership as a foreman?

A. I understood that foremen were not eligible.

Q. Let us take up the case of Jasper Leskovec. Do you recall when he was discharged?

A. Sometime in November, 1936.

Q. What department was he in?

A. The chemical department.

Q. Who discharged him, or laid him off, as the case may be?

A. Mr. Presler laid him off.

Q. Did Presler give you any reasons for that?

A. Well, we were at the end of an ore run of tantalum. His services were not required.

Q. He received pay, however, until January 26th, 1937, did he not?

A. No.

Q. He got his final layoff then?

A. He just go this final layoff.

Q. I show you Respondent's Exhibit No. 35 for identification, Mr. Anselm.

A. Yes.

Q. I will ask you what that exhibit is?

A. That is our authority to pay Josper Leskovec. It is dated 1/26/37. It explains he was laid off for a reduction in force on November 19th, 1936.

Q. By whom was it signed?

2419 A. It is initialed by Luther Henry, and signed by me.

Q. At the time of his discharge in January, and at the time of his being laid off in November, did you know anything about his union activities, whether he was a member of Lodge 66?

A. I do not know the man.

Q. You do not?

A. I am following my records, sir.

Q. Do you know the man when you see him?

A. No.

Q. Let us take up the case of John Taylor. When was he discharged, if you know—withdraw that.

What department was he in, first of all?

A. The maintenance department.
Q. Was he a full-time or a part-time man?
A. A part-time man.
Q. His divided his time between the Fansteel Company—
A. And the Great Lakes Naval Training Station.
Q. —and the Great Lakes Naval Training Station?
A. Yes.
Q. He was what you term a casual laborer?
A. He was a casual laborer. At no time was he considered an addition to our force.
Q. Why was he discharged or laid off, as the case may be?

A. He was laid off because we discontinued the mill-
2420 wright department.

Q. That is in line with the testimony you have given as to the abolishing of the maintenance department, or of the millwright departmnt, is that right?
A. That is correct.
Q. Did you know whether or not he was a union member at the time of his discharge?
A. I have no knowledge.
Mr. Walsh: Let me interrupt you just a moment.
Q. (By Mr. Walsh.) Mr. Anselm, when you refer to the millwright department, is that the same department we have been talking about as the maintenance department?
A. The maintenance department, yes.
Mr. Walsh: All right.
Q. (By Mr. Keele.) Now, there were a number of women employees who did not come back, or were not re-employed or reinstated after the plant reopened subsequent to February 26th.

Did you know at that time—that is, at the time let us say from February 26th to March 15th—whether or not those women or any of them were members of Lodge 66?
A. I had no knowledge of any women being members of any lodge.
Q. By what were you controlled or guided in your selection of the women who were re-employed or reinstated?

2421 A. They were selected by the recommendation of the two foreladies involved, Mary Atkinson and Elsie Aigner.

Q That is all you know?
A. That is all I know.

Q. My that I mean, that is all you know about those women and their reasons for not being re-employed?

A. That is all I know about it.

Q. Did you ever discuss with either Mary Atkinson or Elsie Aigner the question of the union membership of these girls?

A. I did not.

Q. Did you ever give any instructions to either of those foreladies as to the discrimination for or against members of Lodge 66 in the re-employing or reinstating of those employees?

A. None whatever.

Q. Was any mention of it ever made?

A. No.

Q. Was it your understanding that at that time—I am speaking now of the period let us say of a month subsequent to the evacuation of the men on February 26th—was it your opinion at that time that women could be members or were members of Lodge 66?

A. I had no knowledge.

Q. What was your impression?

A. My impression was that there were not any women members in this lodge.

2422 Mr. Keele: That is all on direct examination of this witness.

Trial Examiner Dudley: Very well.

Mr. Keele: We would like to offer in evidence at this time RESPONDENT'S EXHIBITS NOS. 30 to 35, both inclusive.

Mr. Walsh: No objection.

Trial Examiner Dudley: They may be admitted.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 30 Sub-A to G, both inclusive, and RESPONDENT'S EXHIBITS NOS. 31 to 35, both inclusive.)

Mr. Keele: May we have a short recess before cross-examination?

Trial Examiner Dudley: Yes.

(A short recess was taken.)

Trial Examiner Dudley: I will call the hearing to order. You may proceed.

Mr. Walsh: I have a few questions that I was going to ask Mr. Aitchison this morning, but I believe you will be better qualified to answer them.

Cross-Examination.

Q. (By Mr. Walsh.) I take it, Mr. Anselm, that at the time you returned to take over supervision of the plant, there were a number of things that probably needed changing, or you were changing the type of production, were you not?

2423 A. We are not changing the type of production.

Q. You are anticipating an increase in the amount of production you are going to have, is that right?

A. There has been a general business increase.

Q. The factory during the early part of your employment there was largely experimental, was it not?

You carried on a great number of—

A. You mean, going back into the years?

Q. Yes.

A. No. I wouldn't say it was in production.

Q. You are familiar I presume, with the booklet you published under the title "Rare Metals" in 1929, are you not?

A. Yes. I took some part in that.

Q. I believe you related in that booklet the type and kind of experiments carried on by the engineers at Fansteel?

A. I do not know what experiments you have reference to.

Q. I refer mainly to the development of tantalum, the uses for it, new processes for reducing it, processes of fabrication.

A. That may be.

Q. You are still carrying on experiments I take it in these various fields in which your company operates?

A. Oh yes; very extensive experiments.

Q. All the processes used by the company are not standard, are they? I mean, you have not reached the point

2424 where you can say "That is the best way to work this material. We will no longer have to make any changes in the way we produce it."

A. I think we would have to break up our metals in order to say that.

Q. You are still, I presume, discovering new methods of working the metals, are you not?

A. I would say the molybdenum process is pretty well fixed.

Q. That is pretty well standardized?

A. You can say the same for tungsten.

Q. How about tantalum? Do you still have some variations or changes in your processes?

A. I think inasmuch as we are the sole manufacturers of the metal, that will go on for some years to come.

Q. You have not yet reached a point in the development of your process where you can say "This is the best way we know of. We will no longer make any experiments to find out whether there is a better way to make this"?

A. I do not believe anybody's product is up to that point.

Q. However, when you refer to a change in process, it calls for a change in machinery, a change in factory setup, and one thing and another, does it not?

A. I do not recall any that has been made in the last few years.

Q. How about this tantalum fabrication?

A. That is being developed by the invention of new machinery.

2425 Q. It was more convenient to have the tool room in one place, and the fabrication in another, is that right?

A. It is more convenient.

Q. So those changes are going on from time to time, I suppose as you stabilize the process?

A. Changes are going on.

Q. Referring to Respondent's Exhibit No. 31, you say "In order to organize our tantalum fabrication department in the west half of the tool room, it is absolutely essential that this movement be made with sufficient men."

I presume when you returned to the plant, you found—that is, in September—you went through the plant and found better ways of carrying on the work that was going on, is that right?

There were things that fitted with your own ideas of running the plant?

A. I found a few spots I could improve.

Q. You were trying to serve the best interests of the company, is that right?

A. That is right.

2426 Q. This was one of those changes, is that right?

A. That was a change that was planned, and was to be put into execution when the order went out.

Q. When you issued this order, I presume you sent to Mr. Holm, a blue print showing the location of the machinery—

A. No.
Q. —and the location of the power line?
A. No. Very little machinery went in there. I took Mr. Holm up on the floor and pointed out to him the exact location for each machine that was to go in there.
Q. How many machines were moved, do you know?
A. Oh, about six.
Q. That called, I suppose, for a re-running of the power lines, the shaft lines, and belts?
A. None of these machines have any power equipment. They were welders.
Q. They were welding machines?
A. They only required the attaching of wires.
Q. Did it call for the movement of any power lines at all?
A. No, I do not think so.
Q. Or power boxes?
A. Temporary power was available, and the final power was added later on.
Q. When they could get to it?
A. When the Public Service Company could do it.
2427 It was their job, and it had no part in this move over the week end.
Q. This was just a question of taking several machines and moving them up?
A. Moving them up and having them running the next Monday.
Q. I presume he would have to move other machines out of the space into which these machines were to be moved?
A. They had to be moved out prior to that order.
Q. What became of these other machines?
A. They were moved into the tool room.
Q. They were moved into the tool room?
A. Yes, prior to that date.
Q. You said that over the week end he completed only 50 per cent of this job, is that right?
A. Just about 50 per cent of this job. That is my estimate, of course.
Q. Now, in these various work orders—or, referring to respondent's exhibit No. 34, which is your work order of October 7th, you list a number of things that were to be done.
Under "carpenter work" you have five items.
Under "exhaust system" you have six items.

Under "electrical work" you have one item, and you have three items under "steam fitting."

For the completion of this work, did you hire any additional help?

2428 A. No. Our maintenance gang, I believe, as it was—

Q. I beg your pardon?

A. I believe our maintenance gang was ample for the things listed there.

Q. You believe it was?

A. It was.

Q. You were making shipments of varions materials to some chemical company were you not, in which some very extensive crating had to be done?

A. Not that I know of.

Q. You did not—or rather, you do not recall that, is that right?

A. No.

Q. I take it you furnished the various materials; I mean, those were available, were they, for this work to go forward with dispatch?

A. It is my responsibility, yes.

Q. I see. You said that he had his carpenter gang working on a lot of benches and tables that you would not need for a long time, while some of this other work was neglected, is that right?

A. My investigation there showed that we had plenty of labor. There was plenty of labor in his department, and it was available for this job.

Q. It was available for this job?

2429 A. Yes, it was.

Q. What was the labor working on at that time?

A. It was working on some cabinets and benches.

Q. I think you said on direct examination that it was some tables and benches that you would not need for quite a while.

A. That is right.

Q. Now, referring to item 3 in exhibit No. 34, I find this: "Make necessary benches for contact grinding department". Are those the benches they were working on?

A. That may have been part of the job.

Q. So, part of the job was going through while the other part was neglected?

A. Yes. I only picked out two jobs. They were cold weather jobs, both of them.

Q. Regarding this—withdraw that.

At the time you issued this order, while the factory maintenance work was going on, this was in addition to it, was it not?

A. I would say that is in addition.

Q. These were additional things that should be completed as soon as he could get to them?

A. Oh, no, not as soon as he could get to them. They were to be completed.

Q. I notice at the heading of your work order you say: "In order that you may have a clear picture of the work
2430 you are responsible for in connection with the various moves we are making and propose to make, I am outlining for your immediate consideration several jobs. The purpose in giving this information at this time is to enable you to select materials required for each job and for each move far enough in advance so we will not be held up when we get around to the job. The work listed under 'carpenter work' must be completed this month."

Now, did you take into consideration the fact that this might require extra labor?

A. Yes. I am thoroughly familiar with just how much labor it takes to do each job, the tools, the materials, and everything that goes with it. That has been my business for 30 years.

Q. In your opinion there was sufficient labor, is that right?

A. There was sufficient labor.

Q. Also, the remaining part of October—this is dated October 7th—the remaining part of October would not have been ample time with the labor and material that was available, together with the regular work that was going on, to have completed this within the month, is that right?

A. To have completed the items there such as die polishing?

Q. I am referring to carpenter work.

A. Oh, yes, on carpenter work.

Q. You are just referring to carpenter work?

2431 A. Carpenter work, yes.

Q. Under the steam fitting item, you have item 2: "Install hot water system at Building 15." Was that one of the recommendations made by Mr. Johnstone?

A. I took that job away—if you will pardon me for not answering the way you want me to—I took that job away from Holm, and took it and gave it to an outside contractor.

Q. I was wondering if it was one of the recommendations made by Mr. Johnstone.

A. Who was that?

Mr. Walsh: I will withdraw the question.

Q. (By Mr. Walsh.) Referring to respondent's exhibit No. 30-B, that was signed by "A. J. D.", I believe?

A. A. J. Dow.

Q. It says, "Install new rubber ring in dry pipe valve in Building 11". That is part of the sprinkler system I believe, is it not?

A. That is correct.

Q. In order to have repaired that and installed that new ring, it would have been necessary to have taken the sprinkler system—or at least, to have put it out of commission for two or three days, would it not?

A. No.

Q. Is it not a fact that the foreman in whose department this particular valve was to be installed said to let the
2432 thing ride along until the sprinkler service man came to see about it, and then to have him fix it?

A. I believe that says Building 11, does it not?

Q. Yes.

A. It happens to be a warehouse, and nobody works in the building.

Q. Nobody works in the building?

A. No.

Mr. Keele: What date is that, Mr. Walsh?

Mr. Walsh: November 5, 1936.

Q. (By Mr. Walsh.) Nobody works, so, therefore, it could not be under the charge of any foreman?

A. Quite right.

Q. Do you have plumbers on your maintenance gang?

A. Our steamfitters did plumbing.

Q. Your steamfitters were also plumbers, is that right?

A. They did plumbing.

Q. Now, after the men came out of the building on February 26th I believe Mr. Aitchison testified that some of the steam pipes were broken. Did you discover them to be broken? Did you see those in your survey of the building?

A. No. I think Mr. Luther Henry, my assistant did.

Q. There was no heat in the building the greater part of that time, was there?

2433 A. The heat was off a few days.

Q. So you do not know whether the steam pipes were broken by freezing, or because of some other reason?

A. Well, I would not know that.

Q. You would not know?
A. No. It was pretty cold.
Q. Did you inspect the pipes yourself?
A. It was pretty cold during that period.
Q. It was pretty cold during that period of time?
A. Yes.
Q. You did not inspect the pipes?
A. I did not have time for that.
Q. But if you had inspected them, you could have told whether they had been broken by freezing or by something else?
A. By looking at them?
Q. Yes.
A. Yes, I could tell.
Q. Now, in the change of some of these men from the jobs that they had to the jobs that they are now holding, Swanson, Smith and Verenski, I believe, were listed as—
A. Cutters.
Q. They were listed as cutters?
A. Yes.
Q. They were changed over to grinders, is that right?
A. Swanson was moved to the Chemical Building.
2434 Q. To the Chemical Building?
A. Yes.
Mr. Swiren: That is "Verenski".
Mr. Walsh: Verenski?
The Witness: The pronunciation is "Verenski." That is correct.
Q. (By Mr. Walsh.) Verenski?
A. Yes.
Q. Now, Swanson had been a cutter; he was moved to the Chemical Building. What is he doing in the Chemical building?
A. I am sorry. I cannot tell you.
Q. You do not know?
A. Right now, no. I cannot tell you offhand.
Q. With reference to Smith, you said, I believe that he is teaching grinding now.
A. Yes.
Q. Was Smith an experienced man in grinding?
A. No, I do not believe he was.
Q. Would you know how long he had been with you?
A. No, I do not.
Q. Do you recall—I do not—what you said he was doing now? What is he doing?

Trial Examiner Dudley: You said he is plating.
The Witness: Plating. That was his job.
Q. (By Mr. Walsh.) That was his job before the trouble?
2435 A. Before and after.
Q. Before and after?
A. Yes.
Mr. Swiren: Off the record just a moment.
(Discussion outside the record.)
The Witness: Charles Smith was moved to the Northrup Furnace.
Q. (By Mr. Walsh.) Tell me what that is. Is that in the sintering department?
A. That Northrup Furnace is a high frequency furnace. It heats mainly by means of Eddy currents.
Q. In what department, the sintering department?
A. No. That is in the lab.
Q. In the lab?
A. Yes.
Q. Was he experienced in that work?
A. I cannot answer that question.
Q. If he had been experienced in that work, would you know?
A. No, I would not, because I do not know Mr. Smith personally.
Q. Now, Janis, I understand is still grinding, is that right?
A. Yes, he is on the old job, grinding.
Q. Van Treeck was moved from grinding to some other job, I believe?
A. He was moved to the set-up job.
2436 By "set-up" we mean he would prepare the job for the girls, and then leave it for the girls.
Q. He would set their machines—
A. And move to the next machine.
Q. What about Kuszewski—is that the way you pronounce it?
A. That is a pretty good guess.
Q. What is he doing?
A. He is on his old job, of stamping and repairing. That requires a little muscular effort.
Q. What does he do, stamp out copper disks?
A. No. He is stamping steel parts that are used in connection with contacts.
Q. What about Nickoley?

A. He is back on his old job of preparing carbon jigs for the set-up.

Q. Now, in the restaffing of the plant, I presume you found some difficulty in getting men experienced in your particular line of business did you not, Mr. Anselm?

A. No, I did not have any particular trouble.

Q. You did not?

A. I had a great many applications for each job.

Q. Applications of men who had had experience—

A. Experience, yes.

Q. —in working rare metals?

A. Oh, no.

2437 Q. Or men who had mechanical—

A. There are no people experienced in working on the chemical operations of rare metals.

Q. I did not think so.

A. As you move up into the mechanical operations there are plenty of experienced men obtainable.

Q. So it was necessary after you rehired to get new people, and also to shift some of the men who came back to their jobs by reason of having changed certain operations from men to girls, is that right?

A. Yes, we did that.

Q. I believe your employment record shows you have increased employment generally throughout the plant since the trouble; you have had more business?

A. I think the evidence so shows.

Q. As a result, many new people who had not previously worked for you were hired?

A. That is correct.

Q. Now, at the time preceding the trouble, directing your attention to the cutting department which was operated by men, how many disks a day of tungsten contacts, or tungsten disks for contacts did the men cut?

What would the average be?

A. Oh, about 11,000, I would judge.

Q. You figured it out that was a pretty good day's work?

2438 A. That would have been normal. They cut more than that.

Q. That would be about the average?

A. If I were going to set a standard, I would set it at 11,000.

Q. You figured the men cut about 11,000 disks?

A. Of course, do not pin me down on that. On a certain diameter of rod you can cut several thousand more than you could on a .200 diameter, for instance.

Q. If you were cutting .156, you would probably be able to cut more than if you were cutting .250?

A. We do not cut .156. We punch that.

Q. What is it that you cut, .147?

A. .149.

Q. I will not argue with you over-two thousandths.

Mr. Swiren: You had better stick to law, Mr. Walsh.

Q. (By Mr. Walsh.) Then your 11,000, you figure, is a good day's production on .149?

A. Well, they have cut larger diameters, and cut 11,000 and more.

Q. On that 11,000, what percentage of culls would you have?

A. I would not have the figures on that.

Q. You would not know?

A. It would come across my desk, but I would not know off-hand.

Q. How many wheels would it take to cut 11,000 2439 disks? How many wheels a day would a man use?

A. They would average about 250 to 280 disks per wheel.

Q. Now, when you cut more disks in a shorter period of time, the wheels wear out faster, do they not?

A. The harder you press, the faster the wheels go, and the poorer the work is.

Q. And you get more culls, is that right?

A. More rejects, yes.

Q. I believe there was some testimony during the case to the effect that the efficiency men had raised the number of disks the men were to cut per day, is that right?

A. I could not answer that question.

Q. That was before you got there, I believe, was it not?

A. That is right.

Q. How many disks a day are the girls averaging now on the .149, say?

A. Do you want me to give you that from memory?

Q. That will be close enough.

A. From 9,000 to 13,000.

Q. How many wheels are they using, and how many disks are they cutting with each wheel?

A. I will get that for you, if you want it.

Q. I thought you might know. That is an item of cost, and an important item of cost in that department, I believe.

A. They are running as high as a thousand disks
2440 per wheel on .149.

Mr. Swiren: Excuse me just a moment. Off the record.

(Discussion outside the record.)

Q. (By Mr. Walsh.) Your cost clerk advises me that the women are cutting from 25 to 40 per cent more disks per wheel than the men did; am I correct on that?

A. I would say so, yes.

Q. Have you put on any extra girls in the contact department to take burrs off of disks?

A. Not to my knowledge. You mean, to take the burrs off of the cut disk?

Q. Yes.

A. In fact, we do not have burrs any more. We have even removed the inspectors that inspected the work the boys did. We had five. We only have one now.

Mr. Swiren: Just a moment, please. I did not hear the last part of that answer. Will you read it. Mr. Reporter.

(The answer was read.)

Mr. Swiren: You had better correct that statement. I think your statement is in the reverse. Let us get that straight.

Mr. Walsh: I understood him to say that they had at this time, since the girls were on the job, only one inspector, while when the men were on the machines they had five.

The Witness: Sure.

2441 Mr. Swiren: Is that right?

The Witness: There is nothing wrong with that statement.

Mr. Swiren: All right.

Mr. Walsh: Mr. Anselm understood it, and so did I.

Q. (By Mr. Walsh.) In the re-staffing of the plant, you were given full authority to hire or refrain from hiring any persons whom you felt would not work out right in the new organization, is that right?

A. That is correct.

Q. In pursuance to that authority, did you interview the individual applicants?

A. Some of them.

Q. Did you inquire if they had been persons who sat down in your plant?

A. Sure I did.

Q. You took them back whether they sat down or not, if you felt they would work out in your new picture?

A. I made pretty sure they were not going to sit down again.

Q. What did you do to make sure, Mr. Anselm?

A. I questioned them.

Q. Did you say "Joe, are you going to sit down in my plant again?"

A. No. "Joe", I said, "are you going to obey the law in the future and come out when the sheriff tells you?"

Q. And Joe said "Yes", is that right?

2442 A. When Joe said "Yes", we would pass them along to the next stage. We did not hire them alone on that basis.

Q. You conducted a further inquiry of him to determine his availability for service, is that right?

A. That is right.

Q. Who else helped you in the examination of these applicants, Mr. Anselm?

A. As to the particular group you refer to, I had nobody, except the recommendation of the foreman that they wanted them back.

Q. You mean, the group that sat down in the plant?

A. Yes.

Q. You had nothing but their own foremen?

A. Yes.

Q. What were the requirements that the foremen felt the people should have before they would be re-employed?

A. That their work was of good quality.

Q. Yes.

A. And that they had ability to cooperate and get along in the departments.

Q. By "ability to cooperate" what do you mean?

A. There are naturally some men of a quarrelsome disposition that cannot work anywhere. We do not want to mix them up with a group that can cooperate.

Q. I think that is sound. If you felt that their per-
2443 sonalities might conflict with the people they were working with, you did not take them back, is that right?

A. If there were such cases, they were refused.

Q. You relied upon the statements of the foremen, inasmuch as they knew more about how they got along than you did, is that right?

A. It was necessary to do that.

Q. Now, at the time you discharged Mr. Holm, you said among other things you did not like him because of his having master keys made on the outside.

Did you know at the time you discharged him that he had had these keys made?

A. No, I did not.

Q. That developed after you discharged him, and that just made you madder, is that it?

A. Well, I imagine it added a little more oil to the flame.

Q. Have you increased the force in the chemical department since the trouble?

A. In the chemical proper?

Q. Yes.

A. You know, our chemical department consists of two divisions. Our building 9 has some chemical processing, and our building 8 is confined strictly to chemical work.

Q. Yes.

A. I would say that in building 9 there has been no
2444 increase, unless it has been a man to round out a third shift.

Q. Was building 9 where Jasper Leskovec was employed?

A. I would not know that. If he was marked up for chemical building, it would be building 8.

Q. It would be building 8?

A. Yes.

Q. Has there been any increase in that department since Jasper was laid off in January, I believe, it was?

A. I do not believe there has been.

Q. The increase in your production increases the work in your chemical building, does it not?

A. The increase in production would only require the processing of a little more tungstic acid, or ammonia paratungstate. That would operate to build up your run of production.

Q. So an increase in production would not necessarily reflect a very great increase in the amount of chemicals processed?

A. I would not say that. It might add a man to a third shift.

Q. Are you running three shifts there now?

A. On some of the processes.

Q. Were you in January running three shifts?

A. I do not know. I believe we had one job running three shifts.

Mr. Walsh: I see. That is all.

2445 *Redirect Examination.*

Q. (By Mr. Keele.) In spite of all the questioning of each man who was in the sit-down, as to whether or not he would henceforward comply with the orders of court, you hired all of them who came back except three, did you not?

A. It might be four.

Q. Three or four?

A. That is correct.

Q. Now with reference to that exhibit No. 30, which has some six or seven sheets running from A to G inclusive, none of those orders were carried out by Holm, were they?

A. No. These orders were found in his desk.

Q. He had stuffed those orders in his desk; he had never discussed them with you, had he?

A. He had not.

Q. No explanation was given by Holm for not carrying out the orders, is that correct?

A. That is right.

Q. There was no explanation on the others, either, was there, on the other orders that were given him which he did not fulfill as requested?

A. None.

Q. I believe you testified to this, but I am not sure: you placed no restrictions upon the men whom the foremen were to rehire, or to go out and get for rehiring, is that cor-
2446 rect? You did not tell the foremen to go and get this man, or that man, or a man who belonged to the union, or a man who did not belong to the union, did you?

A. No.

Q. No restrictions were imposed?

A. None whatever.

Q. Some of the men you re-employed were men who had participated in the bargaining committee, were they not?

A. Yes.

Q. That is correct, is it not?

A. I believe we did employ some of them.

Q. Some of the others who were on the bargaining committee you asked to come back, and they refused, is that right?

A. It may be that is correct. At this minute I do not recall who they are.

Q. One of them was one of the Dreyer boys, is that right?

A. Yes. I believe Clarence Dreyer was asked to come back.

Q. Among the men who were on the bargaining committee who were re-employed was Germer, is that correct?
A. Yes. He was re-employed.
Q. Van Treeck?
A. Yes.
Q. Ross?
A. Correct.

Mr. Walsh: Just a moment. I think Mr. Anselm
2447 made a mistake there. I do not think he meant to say what he did in answer to one of your questions.

I think he said that Clarence Dreyer asked for his job back.
Mr. Keele: No. He said he was asked.
Mr. Walsh: I think Mr. Anselm—
Mr. Anselm: I thought I said he was asked to come back. That is what I meant.
Mr. Keele: That is all.

Recross Examination.

Q. (By Mr. Walsh.) Mr. Anselm, what is the hourly rate you are paying the electrician you have on your maintenance crew now?
A. One dollar an hour.
Q. What are you paying his helper?
A. I believe one of them is getting 55 cents. He might be getting 60.
Q. The electrician's helper?
A. I think he is.
Q. What are you paying the carpenter?
A. The helper?
Q. No, the carpenter. I believe you have one carpenter, and one helper.
A. The carpenter is getting one dollar an hour.
Q. His helper is getting how much?
2448 A. I believe he is getting around 70 cents.
Q. I believe Warner was getting 95 cents, was he not?
A. Somewhere around there.
Q. Swanson I believe was getting 95 cents.
A. He was getting a dollar.
Q. He was getting a dollar?
A. Yes.
Mr. Walsh: That is all.

Redirect Examination.

Q. (By Mr. Keele.) Mr. Anselm, were these new men in the department worth the difference in price?

Mr. Walsh: I object to that.

Mr. Keele: You brought it out. Now, let us find out about it.

Mr. Walsh: That would be quite a controversial subject. It is not material.

Trial Examiner Dudley: He may answer.

The Witness: What was the question?

Mr. Walsh: Read the question.

(The question was read.)

A. Well, in one case there is only five cents difference, and in the other case there is not any difference. How do you want me to answer?

Mr. Keele: I understood you to say that one man was getting $1.25.

2449 The Witness: No; one dollar. One was getting 95 cents an hour.

Mr. Keele: I am sorry: I misunderstood you. I thought you said $1.25.

Mr. Walsh: I will withdraw the question for you, Mr. Keele.

Mr. Keele: Thank you.

Trial Examiner Dudley: Mr. Anselm, I have a few questions.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) With reference to the carpenters and electricians who were working in the maintenance department—or rather, the two that you have now, the one carpenter and the one electrician, do you know whether or not they are members of a craft union of the American Federation of Labor?

A. I would not know, no.

Q. In regard to the carpenters—

Mr. Swiren: What was the answer?

The Witness: I would not know that.

Q. (By Trial Examiner Dudley.) In regard to the carpenters, electricians and so forth in the maintenance department before the strike, do you know whether or not any of

them belonged to the craft unions of the American Federation of Labor?

2450 A. I would not know that.

Q. If I called your attention to the fact that the respondent's answer in this case, verified by Mr. Aitchison says that many of the maintenance employees of the respondent company for a long period of time prior to the strike were members of individual craft unions, would you think that was a fact?

A. I can point out one who was a member of the craft union.

Q. Who is he?

A. Ted Christianson. I know he worked on my home, and when I got the bill I was satisfied he belonged to the union.

Q. Do you know anybody else in that group?

Mr. Swiren: Here is the exhibit.

Mr. Walsh: What exhibit is that?

Mr. Swiren: Exhibit No. 23.

The Witness: That is all I know.

Q. (By Trial Examiner Dudley.) As far as you know, none of the men now in that department belong to the craft union?

A. I would not know.

Mr. Swiren: What is the answer?

The Witness: I would not know.

Trial Examiner Dudley: Now, I would like to ask one or two questions concerning Mr. Aigner.

Q. (By Trial Examiner Dudley.) Would you know of his duties?

A. He took care of the little tool crib where the boys obtained their supplies.

2451 Q. The tool crib is what?

A. The tool crib is a supply room, for small tools.

Q. Did he do anything else?

A. I do not think he did.

Q. He just handed out small tools as the men came to the supply department and asked for them?

A. He may have run errands.

Q. Did he work as a janitor?

A. I cannot answer that. He may have done some janitor work on the floor.

Q. In what condition is his health?

A. I cannot answer that question.

Q. Does he seem to be in average condition mentally?

A. I made no tests. I would not know that.
Q. As far as you know, he is?
A. As far as I know.
Q. Have you any reason to believe, or do you know of any reason why he is not qualified to do the work he was doing before the strike?
A. No, except that the foreman asked for a younger man.
Q. You know of no reason why a younger man is needed?
A. Yes. A younger man would be able to other work in addition to taking care of the crib, like sweeping the floor.
Q. Is that a full time job?
A. No. That is not a full time job.
2452 Q. What could a younger man do which Mr. Aigner could not do?
A. Possibly fill both jobs, take care of the tool crib and sweep the floor.
Q. Are you sure Mr. Aigner does not do that now?
A. There were two men in there, both in that department.
Q. May I call your attention to the fact that Mr. Aigner testified he served as janitor?
A. Aigner was a janitor. Hoff was the tool crib attendant, but they were both on the same floor. That is the way I understood it.
Q. Aigner worked as a janitor?
A. Yes.
Q. He did not work in the tool room?
A. No. Hoff worked in the tool room.
Q. Could Aigner come as near filling both of these jobs as a younger man?
A. Could he?
Q. Yes.
A. I do not know.
Q. His health, as you said, is all right as far as you know?
A. I do not know anything about his health.
Q. You testified, I believe, that Ed Ruck applied for a job, and you told him his position had been taken by somebody else.
A. I did.
2453 Q. Do you know who it was that took his position?
A. A chap by the name of Sobeck.
Q. Who?
A. Sobeck. I do not know his initials.
Q. Where did you get a hold of Sobeck?
A. At Chicago.

Q. How?

A. Through the employment department of the National Metal Trades Association.

Q. Do you know whom else you got through the National Metal Trades Association?

A. About two more men on that floor.

Q. How many on the other floors?

A. One more.

Q. A total of about four men?

A. A total of about four men.

Mr. Swiren: Are you through with that phase?

Trial Examiner Dudley: Yes.

Mr. Swiren: I move to strike the testimony with respect to the employees received from the National Metal Trades employment office. It does not seem to me material as to what exployment agency was used to obtain employees in the regular conduct of their work.

Trial Examiner Dudley: In view of the testimony of Mr. Aitchison and Mr. Abbott, concerning the nature of
2454 the National Metal Trades Association, I will rule it is relevant.

Mr. Swiren: That is a different office. They were talking about employment through Mr. Abbott's office. This is testimony with respect to employment through a general employment office.

Q. (By Trial Examiner Dudley.) Tell me what this outfit is, then.

A. Well, this is the general employment office. There are hundreds of people who call at that office for jobs every day, and many of them are placed in jobs.

Q. Is that connected with the National Metal Trades Association of which Mr. Abbott is vice president and manager?

A. Mr. Nelson is in charge. That is an independent service.

Q. It has no connection whatever?

Mr. Walsh: It is one of the services, is it not, rendered by the Association?

The Witness: It has no connection.

Trial Examiner Dudley: No connection?

Mr. Swiren: Off the record for just a moment.

(Discussion outside the record.)

Q. (By Trial Examiner Dudley.) Is this a local branch of the National Metal Trades Association?

A. Yes.

Q. Then it is connected with the National Metal Trades Association?

2455 A. Yes, but it is a separate employment agency. It serves everybody in that capacity.

Q. But it is a branch of the National Metal Trades Association?

A. Yes.

Mr. Walsh: You mean, if anybody not a member would call that office and there was the type of mechanic available that they needed, they would send him, is that right?

The Witness: That is right.

Mr. Walsh: They do not restrict the service only to their members?

The Witness: No.

Mr. Swiren: Is your answer "No" to that question of Mr. Walsh's? They do not restrict?

The Witness: They do not restrict.

2456 Q. (By Trial Examiner Dudley.) Do they specialize in supplying employes who are in accord with the principles of the National Metal Trades Association?

A. No.

Q. Do you know what Mr. Aitchison meant when he testified that he had employed two men through the National Trades Association?

A. I think he refers to the same men.

Q. Do you know whether or not Mr. Aitchison thought when he was getting these men, he was getting men that agreed with him and with the National Metal Trades Association in their principles?

A. I do not know what thought he had in mind.

Q. You did not hear him say anything about it?

A. No.

Q. Now, I would like to ask you a few questions about Mr. Holm.

A. All right.

Q. I notice on your exhibit No. 30, that is respondent's exhibit No. 30 and similar exhibits running up to 34 contain in general orders from yourself, or other supervisors to Mr. Holm, do they not, in writing?

A. Yes.

Q. Has this been a procedure of your factory for quite some time?

2457 A. It goes back some years.

Q. One is dated, I think, January, 1936.

A. This form is an old one. There is nothing new about it.

Q. Does your procedure provide for similar reports to be made in writing by the foremen to the supervisors?

A. Yes, sir.

Q. Likewise, does it provide for written requests for men or materials that might be needed in carrying out these orders?

A. I do not believe I understand that.

Q. If you gave Mr. Holm an order to perform a certain job within a certain time, such as the one to move the tantalum department over the week end—

A. Yes.

Q. (Continuing.) —and Mr. Holm felt he could not do that job within the time given him because he did not have sufficient men, or because he did not have sufficient material, or for some other reason, does the procedure of the plant provide that he should report that to you in writing?

A. Not in writing, but he should report that.

Q. Not in writing?

A. We have a telephone in almost every department.

Q. He should report it?

A. Yes, either to me or the assistant superintendent.

Q. Did he make any such reports about any of these orders given in exhibits 30 to 34?

2458 A. I have no reports on any of those jobs.

Q. You mean, no oral reports?

A. No oral reports. I am sure I have none in writing.

Q. Did he ever come to you and say, "Mr. Anselm, I cannot get that job done within that time"?

A. No.

Q. Did he ever come to you and say "I can do this within this time, but it means I have to stop making crates, or stop doing some other work. Which do you want done first?"

A. I do not remember any such conversation.

Q. Now, I would like to ask you about Jasper Leskovec. Why was he laid off?

A. Well—

Q. He was laid off in November, and was finally laid off in January.

A. We ran out of tantalum at that stage. He was no longer required.

Q. Have you never had any need for people who were doing that kind of work which Leskovec was doing?

A. I believe the ore is going to start up very shortly.

Q. Well, let me ask you, if you have any intention as to whether or not you would hire him for that kind of work?

A. Would I hire this man for that work?

Q. Yes.

A. If his foreman wants him, and if he is an efficient man.

2459 Q. I am trying to get the facts here. I do not really see why you laid him off.

A. We did not have work for him.

Q. Have you had work since then?

A. We have not had any regular work.

Mr. Walsh: You have been working out the "Aitchison deposit", is that right?

The Witness: Yes, the tantalum mine in the back yard.

Q. (By Trial Examiner Dudley.) How about John Taylor, the man who worked for you and the WPA at the same time? He worked for you off and on up until the strike, and according to my recollection of the testimony you have never called him back.

A. He had a WPA job. I think the most he could earn on that was $85 a month. However, he could make that $85 possibly in ten days. Then, he would come to work on the job until the following month. His scheme was to go around and get other jobs in between times.

Q. Why did you not call him back to work?

A. We abolished the millwright department.

Q. You have a carpenter in the millwright department, have you not?

A. He would not be the type of man we would hire back for that job.

Q. Would you need him to crate boxes or anything
2460 of that sort?

A. No. We buy our boxes.

Q. How old was he?

A. He was on the stand the other day. I think he is about fifty-nine. If it is important, we can get it.

Q. No, it is not that important. In regard to the women employes, do you have any knowledge as to the efficiency of the women employes whom you did not reinstate?

A. I think Mr. Swiren expects to show something along that line. I personally have no knowledge of it.

Q. You have no personal knowledge yourself?

A. No. There are reports which have been completed

lately by our cost department. I think we are ready with them.

Q. That is what I understood you to testify before. I wanted to check up on it.

A. Yes.

Q. How much do the girls get, do you think, in the cutting and grinding departments?

Mr. Swiren: I think that appears on the exhibit that was filed.

Trial Examiner Dudley: Does it?

Mr. Swiren: I think it is in the exhibit that shows the maximums and minimums. I think there is just one rate in connection with that.

Q. (By Trial Examiner Dudley.) The men who
2461 worked in the cutting department and the grinding department were paid largely on a piece work basis, were they not?

A. That is right.

Q. About how much did that run per man per week, or on any other basis that you might remember?

A. Well, I think they earned around 75 cents an hour.

Q. You think they earned around 75 cents an hour?

A. Yes.

Q. The women are now getting around 45 cents an hour in the cutting department, are they not?

A. They start at 40.

Q. And they get 45 cents in the grinding department?

A. 45.

Q. How much do they get in the spinning department? Do you remember what they get in the spinning department?

A. There are only two machines.

Q. I see. So, putting in women instead of men, has meant a saving, or a reduction in cost from 75 cents to 45 cents an hour, is that correct?

A. That would be one phase of it. If they become more efficient there would probably be other savings.

Q. These people working on an hourly basis—the fact that they become more efficient has no reference to their pay, does it?

A. Yes, sure. These girls here all started at 40 cents.

2462 Q. Do you have a standard scale of rates, or do their hourly wages, as they become efficient, go up?

A. No, but we do give them raises as we consider them coming up to the standard, or beyond the standard.

Q. They are turning out as much, if not more than the men did, are they not?

A. I believe, on the figures given to Mr. Walsh, the men have cut somewhat more in certain cases.

Q. I believe you testified in answer to Mr. Walsh's question that the women are cutting as much, if not more; then, you gave some figures.

A. Yes. I gave him figures on .149.

Q. Generally speaking, would you say the women are now doing about what the men were doing?

A. It may be somewhat less, but that is offset by the better quality. I can show you figures on that.

Q. You mean then they are doing about the same as the men, or perhaps somewhat less, but their work is of better quality?

A. Better quality.

Q. Yet they are getting 45 cents an hour compared with 75 cents an hour, which the men got, is that correct?

A. It appears so at the moment. We will probably pay them more later.

Q. You mean, they might get still better?

A. If they improve, we will pay them more.

2463 Trial Examiner Dudley: Mr. Swiren said he would bring in later some figures showing in detail the number of employes before and after the strike, as I remember it, and a break-down as to men and women.

Mr. Swiren: No, I did not say anything like that.

Trial Examiner Dudley: You did not?

Mr. Swiren: I said I would bring in the figures, which Mr. Aitchison identified in exhibit No. 25. No request was made for a break-down between men and women.

Trial Examiner Dudley: Respondent's exhibit No. 25 shows about 243 production and maintenance employes of the respondent on February 17th. Do you know about how many of these were men and how many were women?

Mr. Walsh: Just a moment, Mr. Examiner. Mr. Swiren does not—this can be off the record.

Mr. Swiren: Yes. Off the record.

(Discussion outside the record.)

Trial Examiner Dudley: Will you read my last question, please, Mr. Reporter.

(The question was read.)

The Witness: Approximately 55 women; the difference would be men.

Q. (By Trial Examiner Dudley.) The difference would be 188 men, according to my subtraction.

A. All right.

2464 Q. At the present time, or for your convenience as of June 11, 1937, respondent's exhibit No. 25 shows 254 production and maintenance employes. About how do they split up as between men and women?

A. I would say about 95 girls, and the rest are men. They changed some, though.

Q. You think there are about 154 men?

A. Just about.

Q. Now, would you tell me about how many men employes you have hired since the strike who were not employed by you immediately preceding the strike?

A. Well, we will have to break that down.

Q. I see.

A. These girls here would be new (indicating).

Mr. Swiren: Let us get that answer on the record. Say it for all of us and let us get it.

The Witness: The difference in the number of girls we had would be reflected in the new employes. The rest of them I would not know.

Trial Examiner Dudley: Well, look at the figures you just gave me indicating that you had 188 men employed on February 17th, and about 154 men employed on June 11th.

The Witness: Yes.

Q. (By Trial Examiner Dudley.) Then you have about 34 less men now than you had before the strike, is that right?

2465 A. I believe there is a change there of about that many.

Q. You have hired some new men, have you not?

A. Yes, some.

Q. Do you know about how many?

A. No, I do not.

Q. Do you think you have hired 100?

A. No.

Q. 50?

A. No.

Q. 30?

A. No.

Q. 20?

A. That would be more like it.

Q. About 20?

A. Yes.

Mr. Swiren: It occurs to me that the Examiner's figures were not very accurate, based on exhibit No. 25. I suggest there were 184 employes, unless that includes all hourly people and watchmen.

Trial Examiner Dudley: I am talking about production and maintenance employes, using the figures given on your exhibit. There were 243 employes in the category on February 17th, and 249 on June 11th.

Mr. Swiren: The 243 includes watchmen and laboratory employes.

2466 Trial Examiner Dudley: That is the entire group there.

Mr. Swiren: I see. I wanted to get the figures that the Examiner was using.

Q. (By Trial Examiner Dudley.) To the best of your knowledge you hired about 20?

A. I prefer that you ask for a break-down of that.

Q. Then, break it down any way you like. Would you rather give me that later?

A. I think it ought to be handed in later.

Mr. Walsh: I think that will be covered by the information that Mr. Swiren will furnish us on this.

Trial Examiner Dudley: He just stated he was not planning to give us that. If we could have that—

Mr. Swiren: We have not refused any information to date, and we are not going to start refusing any now. If the Examiner will tell us expressly what he wants, we will endeavor to make it up and to furnish it.

Trial Examiner Dudley: Do you have—

Mr. Swiren: What are the figures the Examiner wants?

Trial Examiner Dudley: This is off the record.

Mr. Swiren: Yes. This does not need to go on the record.

(Discussion outside the record.)

Trial Examiner Dudley: I would like to ask Mr. Anselm one more question.

2467 Q. (By Trial Examiner Dudley.) Mr. Anselm, respondent's exhibits 23, 24 and 20 list certain men whose jobs were abolished according to the testimony that has been given.

Mr. Swiren: Leave 20 out. Take them separately.

Trial Examiner Dudley: Shall we take that separately?

Mr. Swiren: Yes.

Q. (By Trial Examiner Dudley.) Confining your answer then to exhibits 23 and 24, may I ask you if when those jobs were abolished, any consideration was given these men toward reemploying them in any other jobs that might have been available about the factory?

A. You mean, in reemploying these men?

Q. Yes.

A. Just a minute.

Mr. Swiren: Off the record just a moment.

(Discussion outside the record.)

Trial Examiner Dudley: Will you read my question, Mr. Reporter?

(The question was read.)

A. I think consideration was given to that portion of them who applied for their jobs.

Q. (By Trial Examiner Dudley.) Was consideration given only to those who applied for their jobs, and not to the others?

A. Well, that was our immediate problem, talking to the people who applied. I do not think it was taken up in 2468 a general sense.

Q. Of those who applied for their jobs and were not hired, none of the men listed on exhibits 23 and 24 were hired?

A. Joe Petraitis applied.

Q. But he was not hired?

A. He was not.

Q. Why?

A. Because he was a toolmaker making dies. We did not have die work. He was not considered from the standpoint of having a place in any other department.

Mr. Swiren: He was not refused, was he?

The Witness: He was not considered for other employment, in other departments.

Q. (By Trial Examiner Dudley.) Was there anybody else who applied for work listed on these exhibits?

A. I think the testimony shows that Vincent Dietmeyer applied.

Q. Was he given consideration for any other jobs that might have developed through the plant?

A. I do not think he was.

Q. Was there anybody else?

Mr. Walsh: How about Ed. Ruck?

Mr. Swiren: He is not on the list.

Q. (By trial Examiner Dudley.) Then, is the answer to

my question that you did not give consideration for
2469 other jobs to any of these men you list in exhibits 23 and 24 including both those men who did not apply and also the two men who did apply, plus any others that you may not know of now who applied?

A. That point never came up for discussion.

Mr. Swiren: Speak up.

The Witness: It never came up.

Mr. Swiren: What is that?

The Witness: It never came up. That raises a new point, as far as I am concerned.

Q. (By Trial Examiner Dudley.) Why was no consideration given these people for other jobs?

A. Why was no consideration given them?

Q. Yes.

A. I cannot answer that.

Q. Was it—

A. It just was not brought up.

Q. Was it because they participated in the seizure and retention of the plants on February 17th to February 26th?

A. I never had that in mind, myself. I employed a lot of people who seized and held the plants.

Q. Your answer is then, that some people were not employed because of their participation in the seizure and retention of the plant?

A. A lot of them were.

2470 Q. What was the difference? Why were some people who participated in the seizure employed, and some not employed?

A. I imagine the biggest part of them testified they would not have taken their jobs under any consideration, even if they had been offered them.

Q. There were only 17 who so testified.

A. I cannot answer your question.

Q. Was no consideration given to these men by any chance beecaus of any believed activity on their part in labor union affairs?

Mr. Swiren: Just a minute. We object to the question asked by the Examiner on the ground the men were properly discharged, and there was no obligation upon the part of the respondent to give any consideration to re-employing men who were properly discharged.

Q. (By Trial Examiner Dudley.) Mr. Anselm, would you wish to incorporate Mr. Swiren's remarks in your answer?

Mr. Swiren: That is a different matter, now. I would like to have a ruling from the Examiner on my objection.

Trial Examiner Dudley: Well, I will withdraw the question.

Q. (By Trial Examiner Dudley.) I will ask you this: were those men not given consideration for new jobs because you considered them as having been properly discharged?

A. The answer is "Yes".

2471 Q. That proper discharge was based upon their participation in the seizure and retention of the buildings?

A. I would say "Yes".

Q. Then, that would be the reason for not considering these men for other positions, is that correct?

A. It may have a bearing on it.

Q. Is there anything else that had a bearing on it?

A. There may be some reasons of efficiency.

Q. Do you know what those were?

A. No, I would not know that offhand. I would leave that up to the foremen.

Q. Now, we will pass on to another point. There is one thing which I personally do not understand, and I would like to have your explanation. It is in regard to the maintenance department and the tool room.

You have testified and so has Mr. Aitchison that you found it more economical to have this work done by outside independent contractors rather than by employees.

Why are independent contractors able to do that work through their employees more cheaply than you can do it through your own employees?

A. Because they have production machinery for the manufacturing of tools which we do not have.

Q. Did you ever have production machinery during the time you have operated, since 1907, I believe?

2472 Mr. Swiren: I think there is a misunderstanding on that. There are two departments, the maintenance department and the tool room.

The Witness: Yes.

Mr. Swiren: They sometimes combine them in their statements. I am wondering whether that statement is not confusing?

The Witness: The tool room—

Trial Examiner Dudley: We will confine ourselves to the tool room, then.

Q. (By Trial Examiner Dudley.) I will ask you for how long a time did the respondent operate the tool room, making dies, and so forth, through its own employees?

A. A good many years.

Q. Why has it recently become more economical to have this work done by independent contractors and their employees?

A. Because there is production machinery now for the manufacture of tools which we could not afford to buy, but a jobber would have those tools, or a tool shop would have those tools.

Q. Why, then, can an independent contractor buy this production machinery and make those dies through his employees, and sell them to you at a profit, and at a price which is less than you could buy the machinery for and make them yourself?

A. Because he gets the volume on that one product.

2473 Q. How much of a volume does that require?

A. How much of a volume would that require?

Q. Yes.

A. Well, on that type of die, you would need a volume of from 500 to 1,000 sets a week.

Q. Your volume is about what?

A. Our requirements on this stuff?

Q. Yes.

A. Well, they are from 10 to 37.

Q. A week?

A. Yes. Some weeks it might be higher.

Q. Has this condition of using production machinery for making dies requiring a large volume for economical operation developed within the last few years?

A. Yes. I would say that the Warner & Swazy and Gisholt screw machines are peculiarly adapted to this sort of die production.

Q. About when has this development taken place?

A. I saw those machines over at Cleveland at the last tool show about two or three years ago.

2474 Q. That is about the first time they were developed and made available?

A. I would say as to the present type that is about when it was.

Q. Now, let me direct your attention to the maintenance department. I will ask you the same question. Why can an independent contractor perform work normally done by the

maintenance department, through his own employees and make a profit for himself, at a price which is less than the cost which you would have in doing it through your employees?

A. Well, this group of men is permanent the year around. It is a permanent addition to our staff. When we have an installation which requires a large group like this, with an outside contractor we can bring the men in, and they finish up the job, and then they go home. They may be off the job for a month.

Q. That is, you do not have a sufficient volume of work to keep your men busy?

A. No, we do not.

Q. Did you have a sufficient volume of work to keep Art Holm, Sr., busy?

A. There was a time there, I believe, between September and December, when we had quite a volume of work.

Q. Referring now to the time that you mentioned from January 1, 1936 until February 17th, 1937, and particu-
2475 larly the testimony in Respondent's Exhibits Nos. 30 to 34, was the reason Mr. Art Holm, Sr. and his maintenance department did not get that work finished, mentioned in the exhibits, because he had too much work to do, or because he simply did not do it?

Was he overworked, was he lazy, or was he obstinate?

A. I would say that none of those jobs involved in those orders would require very many hours of labor, so I consider all of that pure neglect on his part, as to that particular group of work there.

Q. You say it was not done because of neglect?

A. It was not done because of neglect.

Q. Was he busy during this time?

A. He was supposed to be.

Q. Well, was he?

A. Off the record, I will tell you some more about that.

Mr. Swiren: No. Let us have it on the record. Let us have it on the record.

Mr. Keele: Do not hold back anything.

The Witness: What was the question?

Trial Examiner Dudley: Read the last question please, Mr. Reporter.

(The question was read.)

Q. (By Trial Examiner Dudley.) What did he do during the time, work or loaf?

A. Well, I have a report from my assistant superin-
2476 tendent that he was asleep on several occasions at his desk.

Q. Who is your assistant superintendent?

A. Luther Henry.

Q. Do you have any idea of what these dates were?

A. I do not. I just got the reports. I had no occasion to doubt the reports.

Q. Do you know the months in which this slumber took place?

A. I do not. I just got reports. I haven't any other data on it.

Mr. Walsh: May I ask a question?

Trial Examiner Dudley: Yes.

Q. (By Mr. Walsh.) Mr. Anselm, during this period, Holm was working as late as two o'clock in the morning sometimes, was he not?

A. I never heard of it.

Q. If he did, you would not know it?

A. Oh, yes, I would.

Q. You would know it?

A. Yes. I would get a report from the watchman, as to just who worked in the plant until two o'clock in the morning.

Q. Then if it is testified to here that he did put in that time, someone is not telling you all that has been going on at that plant, is that it?

A. I do not believe they tell me all, quite all that goes on. I have to dig a lot of it out for myself.

2477 Q. If it develops during this period of time that he worked as late as two o'clock in the morning, you did not know about that, did you?

A. No. I do not believe any of my reports cover that time you mention. I do not know whether they do or not.

Q. You would not know whether the days Luther Henry found him asleep at his desk were days after which he had worked practically all night, would you?

A. I believe I can call Luther Henry for you and get you more specific information. It just came to me as a report.

Q. All right.

A. There are a lot of other things that can make a man sleepy.

Mr. Walsh: That is all.

Trial Examiner Dudley: I have one more question.

Q. (By Trial Examiner Dudley) The reason that the

work, or most of the work of the maintenance department has been given to outside independent contractors is because the volume of the work in the department is not large enough to keep your own force of men busy throughout the year?

A. That is correct.

Trial Examiner Dudley: That is all.

Mr. Keele: That is all.

Mr. Walsh: That is all.

(Witness excused.)

2478 Mr. Walsh: I suggest that we adjourn at this time.

Mr. Swiren: We have one or two more witnesses we can get rid of in a hurry.

Trial Examiner Dudley: All right; proceed.

Mr. Keele: Elsie Aigner.

ELSIE AIGNER, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele) State your name.

A. Elsie Aigner.

Q. You are employed by the Fansteel Metallurgical Corporation?

A. Yes.

Q. How long have you been so employed?

A. Since 1918.

Q. You are in charge of the contact setup department, are you not?

A. Yes, I am.

Q. Do you recall getting a request from the plant superintendent after the plant reopened at the beginning of March as to recommendations with respect to employees to be reemployed?

A. Yes, I did.

Q. Were you told at that time of a change in compensation from piecework in that department to hourly pay?

2479 A. Yes.

Q. Were you asked to bear that in mind in connection with people recommended for reinstatement?

A. I do not remember that particular remark.

Q. Well, did you have it in mind when you prepared your list?

A. Yes, I did.

Q. There is a difference in the people that you would have working in that department, I take it, as between those who would be employed on an hourly basis, and those who would be employed on a piece rate basis?

A. That is right.

Q. Is that right?

A. Yes.

Q. Frances Fellens was in your department, was she not?

A. Yes.

Q. Did you recommend her reinstatement?

A. Well, I had her name down as being efficient when she was on piecework.

Trial Examiner Dudley: As being what?

The Witness: When she was on piecework.

Trial Examiner Dudley: As being efficient, or inefficient?

The Witness: Efficient.

Q. (By Mr. Keele.) How was she when she was on hourly work?

A. Well, she did not seem to put forth her best ef-
2480 forts to my knowledge. I did not think she did.

Q. On the new hourly basis that was prevailing, did you want her back?

A. Well, I did not want her back for several reasons.

Q. What were those reasons?

A. Well, it seemed like she was always agitating trouble. She seemed to make remarks about this one, and the other one, and I think when that tension is in the department, one cannot do the work that is required of them.

Q. Did you know at that time she was a member of Lodge 66?

A. No, I did not.

Q. Was there any reference to membership in Lodge 66 in the instructions as to the people you were to reinstate?

A. None at all.

Q. That had nothing to do then with your asking that she be not reinstated, is that right?

A. Nothing at all.

Q. Evelyn Graimer was in your department, was she not?

A. Yes, she was.

Q. You did not ask for her return, did you?

A. Well, I cannot say that I asked for her.

Q. Did you want her back?

A. I can't remember anything about her particularly, only

that as working in a group, or working in a team with
2481 two people, she was efficient, but I do not know what she could accomplish personally, alone, on some of the jobs that might be assigned her.

Q. Have you been doing any more team work in the department?

A. No, we have not.

Q. Not since the abolition of the piece rate?

A. In fact, she and the other girl sitting alongside of her were the only two that carried on team work.

Q. You didn't want that team work to go on in your department?

A. It was all right when it was on a piecework basis, but when it is on the day work basis, each one has to produce for themselves.

Q. Did you know whether Evelyn Graimer was a member of Lodge 66?

A. No, I did not.

Q. Did you see, before you testified, a list of the membership cards of Lodge 66, as introduced in evidence?

A. Yes.

Q. Did you see the names of some of the girls in your department that are now employed, that are on that list?

A. Yes.

Q. About how many are there, do you know? Just give us the number, but not the names.

Q. At least six.

Mr. Walsh: How many?

2482 The Witness: At least six.

Q. (By Mr. Keele.) That did not affect your reinstating those girls, did it?

A. No, it did not.

Q. Did you know then, when they came back, whether they were members of Lodge 66?

A. No.

Q. Have you asked them since?

A. No, I did not.

Q. With reference to your recommendations as to who should be reinstated, were they followed in your department? Did the plant superintendent follow them?

A. I do not believe I quite understand what you mean.

Q. You made your recommendations as to whom you would want back in the contact setup section, is that right?

A. Yes.

Q. You did, did you not?
A. Yes.
Q. Those were passed on to the plant superintendent?
A. Yes.
Q. Were those followed by the plant superintendent?
A. Well, as near as I can remember, they were.
Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) What did you mean by saying
2483 that Frances Fellens agitated trouble?

A. I don't know. It always seemed like there were little things that came up, little petty things. I suppose. She was always saying that this one said this, and this one did that, and things like that. It seemed like she had some of the girls on edge. It seemed that she always said she was innocent of it, but whether she was or not was never proven.

Q. Yes.

A. From the time she was there, there was always a question as to whether or not she should be kept on the force.

Q. When you put her on an hourly rate, did she materially fall down in the number of articles she produced?

A. You mean, when they abolished the piecework rate?

Q. Yes.

A. She was never called in after that happened, after we had done away with piecework.

Q. I misunderstood you, I think. I understood you to say she was efficient on piecework and she was inefficient on hourly work.

A. Well, by that I mean when we ran out of piecework, there were certain jobs that had to be done—

Q. I see.

A. —on day work.

Q. Yes.

A. She never produced what the other girls did.

2484 Q. Did she do the same type of work she had been used to?

A. It was all the same, handling with the same forceps we use all the time. The motion is the same. The only difference is learning to handle that particular job.

Q. Maybe you had better explain a little more in detail what you did on piecework, and what you do on hourly work.

A. Well, all piecework was mostly working on breaker-arms.

Q. Breaker-arms?
A. Yes.
Q. Yes?
A. There were pieces of tungsten, copper, steel pieces or composites—we call the composites steel pieces—and silver.
Q. That was used in setting up the contact point itself; is that what it was?
A. Yes, it was.
Q. The piecework was the assembly of the breaker-arm?
A. Yes.
Q. She was not as efficient in the assembly of the contact points as she was in the assembly of the breaker-arm?
A. No.
Q. Is that right?
A. No, she was not.
Mr. Keele: I think you might clarify it and save me a few questions by asking her what is the assembly structure,
2485 and what is the breaker-arm.
Q. (By Mr. Walsh.) Tell me what the assembly of the breaker-arm consisted of. What did she have to do?
A. We have to place these breaker-arms in the carbon solution. Then we had a piece of blotter moistened. We had our tungsten pieces on that blotter. We took the tungsten that was moistened, and placed it onto the welding disk, and then onto the arm.
That was all there was to that operation.
2486 Q. Now, what was the operation in the assembly of the contact points?
A. Well, in some cases we had to put the tungsten in the jig spurs, and then put on our copper, and then our steel pieces.
Q. Yes.
A. On the composites, it was very similar to that. She never seemed to be able to turn out as much on one as she did on the other. When I was trying to teach her how to do it, she always tried her own system, after we had worked on it for years and years, trying to find the better way to do it.
Q. She could not adjust herself to the most efficient method of doing it, is that right?
A. I don't know. I wouldn't want to say that.
Q. Well, now, of course, you did not try her on the assembly of breaker-arms on an hourly basis, did you?
A. We did on certain occasions, when we had put in a new piece work rate on different jobs, and we had to know it before.

On several occasions I timed her, and she was not producing what we thought she could do.

Q. Did she produce any more or any less on piece work, on a piece work basis than other girls in the same line of work?

2487 A. About the same, after she got up to the speed that the other girls had.

Q. After she had had ample experience, is that it?

A. That is right.

Q. Evelyn Graimer, you testified, was effective, or efficient rather, when she worked in a team with another girl, but you did not know whether she would be efficient working alone.

Did you ever try her working alone?

A. No, I never did, because those two girls always sat together, working on piece work, the way they wanted to work it when they were on piece work, so I could not have any opinion.

If they felt they wanted to share the work between each other, that was up to them; being on the hourly basis, I do not know.

Q. It might have worked out on an hourly basis, is that right?

A. It might.

Q. You never tried it?

A. They were always working on the same jobs, all the time.

Q. Nevertheless, you never tried out to see whether she would produce what your standard called for on the hourly basis. did you?

A. She generally worked on just one job most of the time, with the exception of working with this other girl on

2488 the team work.

Q. I believe her husband works there, does he not?

A. He did, I think.

Q. He was in the sitdown, was he not?

A. He was not, no.

Q. You do not know whether Bill Graimer sat down in the plant or not, do you?

A. No, I do not. I haven't any idea of who was in and who was out.

Mr. Walsh: I see. That is all.

Mr. Keele: I have one more question.

Q. (By Mr. Keele.) As to Miss Fellens, did she do as well as the others did when she was on piece work—or rather,

did she also do as well as the others did when she was on an hourly basis to test new piece rates?

A. I do not know. I do not want to answer that question right offhand.

Q. Do you know?

A. She did as well as some of them did.

Q. She did not do as well as all, is that it?

A. That is right.

Q. You were trying to get your department back on the most efficient basis you knew how?

A. That is right.

Mr. Keele: That is all.

Q. (By Trial Examiner Dudley.) You are the
2489 daughter of Joseph Aigner?

A. No; I am his daughter-in-law.

Mr. Walsh: You are his daughter-in-law?

The Witness: Yes.

Q. (By Mr. Walsh.) Do you live with him?

A. No, I do not.

Mr. Swiren: His son is also employed by the company.

Q. (By Mr. Walsh.) Is your husband employed by the company?

A. No, he is not.

Mr. Swiren: I thought he was.

Mr. Walsh: No, he is not.

Mr. Swiren: Is there not another Aigner employed there?

The Witness: No, there is not.

Mr. Swiren: I see.

Q. (By Mr. Walsh.) Is there any special trouble between you and Frances Fellens?

A. No particular trouble between she and I, no.

Q. Did you ever have any?

A. I would not say we did have.

Q. Would you say you did not have?

A. Well, we had to call her on different things she had said about this one, and that one. That would probably be my duty to do that, and try to keep the girls in harmony down there. But, as far as she and I having words together,
2490 we never had words together.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: I suggest we adjourn at this time, if the Examiner please.

Trial Examiner Dudley: We will adjourn at this time until 9:30 tomorrow morning in this room.

(Whereupon at 5:00 o'clock p. m., Tuesday, June 22nd, 1937, an adjournment was taken until 9:30 o'clock a. m., Wednesday, June 23rd, 1937, in room No. 4, United States Post Office Building, Waukegan, Illinois.)

2494 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Room 4, United States Post Office Building,
Waukegan, Illinois,
Wednesday, June 23, 1937.

The above-entitled matter came on for further hearing, at 9:30 o'clock a. m., pursuant to adjournment.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North LaSalle Street, Chicago, Illinois, by

Max Swiren and Harold M. Keele, and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

2495 PROCEEDINGS.

Trial Examiner Dudley: I will call the hearing to order. Have you any motions or witnesses this morning, Mr. Swiren?

Mr. Swiren: We still have witnesses.

Mr. Keele: James Brown.

JAMES BROWN, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) Will you state your name, please.
A. James Brown.
Q. Where do you live, Mr. Brown?
A. Wilson, Illinois.
Q. You are employed by the Fansteel Metallurgical Corporation?
A. The Fansteel Metallurgical Corporation.
Q. In what capacity?
A. Cost clerk.
Q. How long have you been in that capacity?
A. Twelve years.
Q. Now, all reports of all foremen or, at least, of all inspection department foremen, come to your desk, do they not?
A. That is right.
Q. Will you tell us just what that procedure is with reference to the checking of reports of the inspection department foremen?
2496 A. The reports come over on time cards issued to each individual. These time cards are punched and placed through an International time recording system, that is, duplicating equipment, and the recap apparatus. This report is given to my immediate superior, Mr. Al Dow.
Q. And tabulations are made up from those records?
A. And tabulations are made up from those records from the original time cards.
Q. Is that true of the department headed by Mary Atkinson?
A. That is right.
Q. And she is in charge of women only, that is, she has in her department women only, no men being employed.
A. That is right.
Q. Have you made an examination of your daily time records or reports with reference to the work of that department and each person in it for the month of February, 1937?
A. Yes.
Q. Have you also made up charts or reports or records of the work of that department and the individuals in it for months subsequent thereto?

A. That is right.
Q. For what months?
A. March, April and May.
Q. Have you compared the chart or report tabulated or based on those figures, for the months of February and later months?
2497 A. I have.
Q. Do those reports show the work done by the various girls in that department, or women in that department?
A. That is right.
Q. Now, with reference to Marguerite Seifert, what job did she hold in February?
A. She held the job of disk inspector.
Q. And that was in what department?
A. That was in the contact inspection department.
Q. That was under the control of what foreman?
A. Miss Atkinson.
Q. All right. What do the records show with reference to her efficiency for the month of February?
A. The summary of Marguerite Seifert in the month of February show that on three out of four jobs inspected in February, 1937, she showed less efficiency in inspection than any of the girls in the group. She was ten to fifteen per cent below the average on these jobs, and a much greater percentage below the production rates on similar items for the months of March, April and May.
Q. That was the basis on her—
A. Actual production.
Q. What was the result of your investigation? I will withdraw that.
When you say on three out of four jobs inspected, 2498 what do you mean by that?
A. I mean on three out of four different parts. She worked on a total of four different parts during the month of February and on 75 per cent of that work she was below the percentage, ten to fifteen per cent below the average of all other girls.
Q. What was the result of your investigation with reference to the work of Vivienne Johnson for the month of February? I mean that portion of the month when you operated?
A. The full month on which I have records? That is, from the 1st to the 17th, inclusive.
Q. All right.

A. Vivienne Johnson on one-half of the operations performed, she was 40 per cent below the average of the other girls in the group. In one instance she was about on a par with the average and in one instance she was slightly higher than the average.

Q. All right.

Mr. Walsh: Will you read that answer, Mr. Reporter.

(The answer was read.)

The Witness: In all cases she was below the average.

Q. (By Mr. Keele.) What is the fact with reference to Fern Gartley?

A. She worked on seven jobs during the month of February and on each and every one of these seven jobs she
2499 was 25 per cent below the average for the other girls in the group, and she was below the high girls in the same group by about 40 per cent. Her average hourly production for February approximates 50 to 65 per cent of the average for the month of May.

Q. (By Mr. Swiren.) That is the average of other girls for the month of May, is that right?

A. Other girls in the same parts.

Q. (By Mr. Keele.) What was the situation with reference to Joan Bissonette?

A. She spent most of February working on three parts. On two of these parts there was production in April. There was no comparable production in the month of February. On these two parts her averages in April were 1228 and 1535 against 2194 and 2137 average in April. On one part her average per hour was 663 and that part inspected by one girl in March was 1397. The same part in April, 1674.

Q. I take it that you mean by the last part of that answer that another girl, doing the same kind of work on the same part—

A. That's right.

Q. (Continuing.)—during the month of March inspected on her hourly average 1397 pieces?

A. That's right.

Q. And in April 1674 piece on an average?

A. That's right.

2500 Q. Whereas the work of Joan Bissonette showed she had only inspected 663?

A. That's right.

Q. On an hourly average for the work done in February?

A. That's right.

Q. All of these figures you have given here, as I understand it, are based upon hourly charts or time cards?

A. Hourly tickets.

Q. Those are made out in the department where the work is done?

A. Yes, sir.

Q. And they go through the foreman's or, in this case, the forelady's hands?

A. Yes, sir.

Q. Checked by her and then sent directly to your department?

A. That's right.

Mr. Keele: You may cross-examine.

Cross-Examination.

Q. (By. Mr. Walsh.) Did you make any records for the months prior to February?

A. Yes, sir.

Q. What did the month of January reflect with reference to Vivienne Johnson?

A. We didn't analyze them for January of this nature.

Q. You just analyzed them for February?

2501 A. Yes, sir.

Q. That would be how many working days?

A. Seventeen working days. No, not seventeen working days. As many working days as there are in February up to the 17th.

Q. Well, how many days did they work between the 1st and the 17th?

A. I don't know how many, offhand.

Q. What day did the 1st day of February fall on?

A. The 1st of February fell on Monday.

Q. And then they worked until Friday. That would be February what? 5th?

A. That's right.

Q. Then they worked again on February 8th?

A. Or on the 6th. I am not sure whether they worked on Saturday or not.

Q. Do your records reflect whether they worked on Saturday?

A. The records I have with me do not.

Q. What is your recollection apart from your records?

A. It appears to me they did work on Saturday. I would answer that they did work on Saturday.

Q. Is there any particular reason for that? Were you rushed in production, or were you working ordinary time, or something?

A. I don't believe so. I don't know.

Q. They would not work on Sunday, I suppose?

A. No.

2502 Q. That would be the 7th. Then they would work on the 8th, to the—well, what day did Saturday fall on?

A. They worked from the 8th to the 13th.

Q. And then that is Saturday?

A. That is Saturday.

Q. Did they work that day, do you know?

A. I don't know.

Q. Do your records reflect that?

A. I can get that information.

Q. You can furnish us that, can you?

A. Yes, sir.

Q. Then they started again on the 15th, I suppose?

A. That is right.

Q. The 15th and 16th and 17th.

A. Yes, sir.

Q. So there would be a maximum of fifteen working days, is that right?

A. Possibly, yes.

Q. And there would be probably two days left, or thirteen working days, that is, if they didn't work on Saturday?

A. That's right.

Q. Now, you made no analysis of the work for January in the same manner that you have testified to about February, did you?

A. No, I didn't.

2503 Q. Did you make such an analysis for December?

A. I believe I did, yes.

Q. Do you have that with you?

A. No, not with me.

Q. Did you make such an analysis for November?

A. I believe I did.

Q. Do you have any independent recollection of what those analyses would show with reference to the efficiency of these girls?

A. I have submitted reports to my superior.

Q. What did those reports indicate?

A. I believe they would bear out the present conditions.

Q. They would bear out, then, that Vivienne Johnson on one-half of her operations was 40 per cent below the average. In one operation she was on par, and one operation she was a little higher, is that right?

A. Yes. They would have to be detailed to know definitely.

Q. Did you recommend to your superiors that Vivienne Johnson be retained on those operations in which she was on a par, on an average, and on those operations in which she was higher than the average?

Mr. Swiren: That is objected to. This is a cost clerk and not a forelady.

Mr. Walsh: I am asking him whether or not he recommended that.

2504 Mr. Swiren: And I object to it.

Trial Examiner Dudley: The objection is overruled.

The Witness: I made no recommendations. I let the superiors read the figures and act accordingly.

Q. (By Mr. Walsh.) You assumed, then, your superiors would rearrange the work accordingly, is that right?

A. Yes, sir.

Q. Did that same thing apply to Fern Gartley and Joan Bissonette?

A. What is the question?

Q. What I mean, is that you made no individual recommendations as to what should be done?

A. No, I submitted complete and detailed reports on all girls.

Q. You assumed, then, that the report went to the forelady in charge of that particular department?

A. Yes, sir.

Q. And that she will do her job as to rearranging the work so that the girls turn out the most work they can?

A. That's right.

Q. Now, what were these operations that Vivienne Johnson worked on in February?

A. She was inspecting disks.

Q. Inspecting tungsten disks which are used for contact points, is that right?

2505 A. Yes, sir.

Q. How many disks a day did she inspect?

A. She inspected on four different sized disks. The sizes, do you want them?

Q. Well, let us start with the little and go to the big.

A. Size .150 diameter by .022. She inspected during the month of February 3821 of those disks per hour.

Q. Per hour?

A. Yes, sir.

Q. How many of the next size?

A. .172 by .024.

Q. And how many did she inspect per hour?

A. 2810.

Q. That was her average?

A. Average inspection.

Q. What is the next one?

A. .149 by .037, 4,443.

Q. And the next size?

A. .187 by .037, 3717.

Q. Now, on one-half of those different sizes she was 40 per cent below. Now, which two sizes were they?

A. .150 by .022 and .187 by .037.

Q. Give us the figure for the average hourly inspection by the group.

A. .150 by .022, 6713.

2506 Q. Per hour?

A. Yes, sir.

Q. How about the next size?

A. .187 by .037, 5124.

Q. Now, on the next size she was on a par with the average for the group. What size was that?

A. .172 by .024, 2800.

Q. That was the average of the group?

A. Yes.

Q. And the next size was what?

A. .149 by .037.

Q. How many did she inspect and what was the average of the group?

A. She inspected 4,443, and the average for the group was 3,832.

Q. Now, with reference to Fern Gartley, do you have your records there as to what her performance was in February?

A. Yes.

Q. I believe she worked on seven jobs. Will you tell us what those jobs were?

A. How many part numbers?

Q. Well, part numbers won't help us. Tell us what the parts were, if you can.

A. Contact rivets and contact arms.

Q. And there are seven different things she had to
2507 do with those two; there are seven different styles of contact rivets and contact arms, is that right?

A. Yes, sir.

Q. Now, on each one of these, I believe you testified, she was 25 per cent below the average? Is that right?

A. In the aggregate she was 25 per cent below the average.

Q. Well, now, let us go through your various operations with her in the same way you did with the Johnson girl.

A. Part 1094—

Mr. Swiren: So that it will help to clear the record on this, I suggest that he testified 40 per cent below the high. If he gives the average and the high together it will be easier for us to follow.

Mr. Walsh: Yes, I believe so, too.

This is off the record, Mr. Reporter.

(Discussion outside the record.)

Q. (By Mr. Walsh.) How many girls were in that department?

A. I don't know, offhand, about part 1094.

Mr. Swiren: Now, we are talking about Fern Gartley.

The Witness: Yes. Her average for February was 1845. High girl for February, 2413. Average of all the girls, for February, 2413. High girl for March, 3418.

Part No. 1217: Average for February, 1429. High girls for February, 2580. Average of all the girls, 2200.

2508 In March there were only apprentices, apprentice workers on the job, and 3450 pieces per hour was the average of all girls.

Q. (By Mr. Walsh.) What do the apprentice workers do?

A. They are new help that we just hired, that is all.

Q. I see. Well, how did they work in March?

A. Naturally they were below.

Q. Considerably below. What was the figure on that, Mr. Brown?

A. I don't have it with me. That can be obtained, however.

Q. I see.

A. Yes.

Q. Were they all new girls filling that department?

A. No, sir.
Q. Some were old girls retained, I suppose.
A. Yes.
Q. And the inspection was cut down considerably.
A. Yes, sir.
Q. All right. Now, will you just proceed with the other operations?
A. Part No. 1248: 1362 for the average, 1469 high girl in February. High girl in March, 3287.
Part No. 1325: Her average for February was 2148. High girl for February, 5358. Average of all the girls in February, 2432. High girl in March, 3409.
2509 Part No. 2195: Her average for February, 2777. High girl for February, 4087. Average of all the girls, 3072. High girl in February, 3709.
Part No. Q-40444: Her average, 11,957. High girl, 25,000. Average of all girls, 25,000, which means only one other girl worked on the job with her.
Part No. Q-40527: Her average, 663. High girl, 854. No average for February. High girl in March, 1397.
That is all.
Q. Now, I think we left out Marguerite Seifert. Will you read into the record the same information for Marguerite Seifert?
A. She is a disk inspector. Part No. .150 by .022, average for February, 6401. High girl for February, 6713. All other girls, average, 6713. High girl for March—
Q. Do you have the low?
A. The low? No, I do not. I have it averaged. The low would more than likely be apprentice help.
Part No. .172 by .024, her average, 2363. High, 2955. Average for February, 2798. High for March, 3323.
Part No. .149 by .037: Her average, 4013. High girl, 5218. Average, 3832. High girl for March, 4577.
Part No. .187 by .037: Her average, 4511. High girl, 6133. Average all others, 5124. High for March, 5120.
Q. You do noth ave the average or low for March, do you?
2510 A. In these instances here the average for March was made up of over 90 per cent of apprentice work.
Q. So it would not reflect any average?
A. It would not reflect any average.
Q. I see. Now, repeat the same operations for Joan Bis-

sonette. I believe that will cover all the girls concerning which you testified.

Mr. Swiren: I think he gave figures on Joan Bissonette before.

Mr. Keele: Correct.

Mr. Walsh: He gave some figures I have here, but supposing he put it all in now, and then when we go over the record we will have it all together.

The Witness: Part No. Q-40033—

Q. (By Trial Examiner Dudley.) Is that "Q" or "2"?

A. "Q". That could be left off.

Joan Bissonnette's average for February was 1228. She was the only girl that worked on the part in February. That would mean that the high would be 1228. There were no others on the part in February. There was no average. The high girl in March was 1826, and the average of all the girls for March was 1540.

Part No. 40240: Her average for February, 1535. High girl in February, one other girl, 1641. No average in February. High girl in March, 2209. Average of all the 2511 girls in March, 1956.

Part No. 40527: Her average, 663. High girl, for February, 854. No average for February. High girl in March, 1397.

That is all.

Q. (By Mr. Walsh.) Do you have a March average?

A. No, we have no March average. Apparently that would be one item, 1397.

Q. Mr. Brown, the figures you have just given us as to each one of these girls about disk production represents their hourly rate of production, is that right?

A. That is right, their gross hourly rate.

Q. What do you mean by gross hourly rate? Are they reinspected, or something?

A. No, but in an inspection some parts are passed as being good and others are thrown out.

Q. I see.

A. In other words, it would be a different ratio if we would figure only the good parts inspected.

Q. Then these figures—Oh, I think I have it straight now. These figures reflect all of the parts they inspected.

A. All that they handled. In other words, it is an average. It would not be fair to judge—

Q. On the net result.

A. On the net result, no.

2512 Q. I see. Now, on the reopening of the plant were there any girls retained in that part who had a lower average or production than these girls concerning whom you have just testified about?

A. I don't believe so.

Q. You have no independent recollection of that, I take it?

A. No, I do not.

Q. Can you tell us the names of any girls still employed in that department?

A. No, I do not cover that thoroughly. I have too much other stuff to do.

Q. I see.

Mr. Walsh: That is all.

(Witness excused.)

MARY ATKINSON, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) Will you state your name, please.

A. Mary Atkinson.

Q. Where do you live, Miss Atkinson?

A. North Chicago, Illinois.

Q. You are an employe of the Fansteel Metallurgical Corporation?

A. Yes, sir.

Q. In what capacity are you employed?

2513 A. I am forelady of the inspection department.

Q. How long have you been there in that capacity, Miss Atkinson?

A. Since August 4th, 1908.

Q. As I understand it, the routine in that department calls for the turning in of the time ticket or time card each day showing the hourly production of each of the workers in your department, is that correct?

A. Yes, sir.

Q. And those cards are made up there in your department and checked by you?

A. Yes, sir.

Q. Each day?

A. Yes, sir.

Q. Those cards, after they have been checked and O. K.'d by you, are sent to the cost department, is that correct?

A. Yes, sir.

Q. Directing your attention to Marguerite Seifert, she was an employe of that department prior to February, 1937, was she not?

A. Yes, sir.

Q. Can you tell us something of her general efficiency or your reports on her efficiency?

A. Well, while Marguerite was not an old employe, she was not a very fast worker, and she was one that would
2514 never make out in that department and I had not intended to keep her, that is, unless we had become slack; I would not have kept her anyway, so when we were making the adjustments, I let her go then.

Q. Now, you are talking about adjustments. You refer to the interruptions of operations due to the seizure of the plant?

A. Yes, sir.

Q And your immediate superior is the plant superintendent, is that correct?

A. My superior is Mr. Al Dow, although I am subject to the plant superintendent's instructions also.

Q. The reason for that is that being in an inspection department you report to a different official than the production people report to, is that correct?

A. Yes, sir.

Q. In other words, the production work is under Mr. Anselm, and, as a matter of fact, the routine, the inspection department, would naturally not report to him, but to someone else to be checked against his figures, is that correct?

A. That is correct.

Q. But, the plant superintendent has the employment problem?

A. Yes, sir.

Q. That is, the power to discharge and to hire, that
2515 is correct?

A. Yes, sir.

Q. All right. Now, at the time the plant was turned back to the company, or the buildings, by the sheriff, a reorganization of the personnel of the plant or factory was under way, was it not?

A. Yes, sir.

Q. Or was begun.

A. Yes, sir.

Q. What changes, if any, were made in your department as to the method of operation or the basis of pay? Was there any change made as to the hourly base. There was no change made there as to the piece work or hourly basis, was there?

A. No. We were always on an hourly basis.

Q. That is right. What instructions, if any, were given to you with reference to the restarting or rebuilding of the personnel of your department by Mr. Anselm and Mr. Dow?

A. I was asked to submit a list of names of the help I wanted returned to work, which I did.

Q. All right. Were the names of Marguerite Seifert, Vivienne Johnson, Fern Gartley and Joan Bissonnette on the list you submitted of those which you wished to return to work?

A. No, sir, they were not.

Q. All right. Now, why wasn't the name of Marguerite Seifert on that list?

2516 A. Well, she was not an efficient worker, and a new girl could be broken in and do practically the same as she did, so I didn't put her name on there.

Q. You testified a while ago something about her efficiency, didn't you?

A. Yes. She would never make a very efficient worker. We can generally tell those things, working with people so long.

Q. All right. But, she had been retained up to that time, at this time, because the production was heavy at that time, is that correct?

A. Yes, sir.

Q. Now, what would have occurred in her employment when the slack period came on, if it did come on, under normal conditions, that is, if there had been no interruption of operations?

A. Well, she would have been laid off and never recalled to work.

Q. Now, what was the reason you did not put the name of Vivienne Johnson on that list?

A. Well, she was a spasmodic worker. Some days she would work fairly well, and other days she would do very little, and she used to choose her own work and boss the other girls too much for her own good, and so for that reason she would not be taken back.

Q. What was the situation with reference to Fern Gartley?

2517 A. Several times I spoke to Fern about her lower grade of work and talked to her about it and I warned her I would have to leave her go if she did not do better work. She never made any improvement, so in making adjustments I didn't call her back.

Q. All right. What is the fact with reference to Joan Bissonnette?

A. Well, Joan Bissonnette had several let-down periods during the day. The quality of her work was fair, but she was very slow and didn't turn out very much and she needed supervision all the time. If I left the room she would quit her work immediately, and I didn't think she was a very trustworthy worker, so I didn't call her back.

Q. Now, as I understand it, there are two qualities relating to the efficiency of the work. One is the amount of work turned out, and the other is the quality of the work, in the sense of whether it is efficiently done, is that correct?

A. That is both considered.

Q. Whereas one person might turn out a tremendous amount of work, comparatively, though they might make a great many mistakes in going through the work, is that right?

A. Yes, that is right.

Q. So both things have to be considered, is that right?

A. Yes, sir.

2518 Q. Are these reasons you have given the only reasons that controlled you in leaving the names of these four girls off the list of those you wished to have back in your department?

A. Those reasons I have stated are the only reasons.

Q. Are these records concerning which you heard Mr. Brown testify—you heard him testify about them, did you not?

A. Yes, sir.

Q. Those records on which he stated he based his computations, are the records that passed through your hands each day.

A. Yes, sir.

Q. And you had been observing those records for some months?

A. Yes, sir.

Q. All right. Will you state whether or not the summary that he gave as to the general efficiency of these girls is about

in line or is not in line, whichever it is, with what they had been doing during the previous months of January and the month of December and the month of November?

A. I was pretty surprised when I saw his records, that they were just about as my opinion of the girls' work was.

Q. In other words, you had never made an actual computation of those conditions?

A. No, sir. I got the daily records and they are not averaged over the month, but they check with my estimation of the girls' work in the end.

Q. In other words, as you see these records day by
2519 day you form a general impression as to the degree or percentage of efficiency of the various girls in your department?

A. Yes, sir.

Q. How many girls are there in your department?

A. There are twenty.

Q. You have been doing this work since 1908, is that right?

A. Yes, sir.

Q. And you were surprised to learn, in other words, that those figures he gave checked pretty closely with your general impression of the efficiency of those girls, based on your observations of their work?

A. Yes, that is right.

Q. Would you say these four girls were the bottom four girls or at the top of the list of the girls in your department, so far as the efficiency of the different girls was concerned?

A. Yes, I would.

Q. Now, in considering the rebuilding of your department after February 26th, did any considerations of whether the persons who had worked for you should be recalled,—were any considerations based on whether or not they were members of Lodge 66?

A. No, sir.

Q. Did you know whether any of these girls were members of Lodge 66?

A. I did not.

2520 Q. Did you know whether any of the girls in your department were members of Lodge 66?

A. No, sir.

Q. Were you given any instructions by any one connected with the management with reference to discrimination against members of Lodge 66 in the re-employment program?

Mr. Walsh: I object to that, unless we know at what time the discrimination was practiced.

Q. (By Mr. Keele.) All right; at any time?

A. No, sir.

Q. Was anything said about it?

A. Not to me.

Q. Were all the girls whose names appeared on the list which you submitted to the management, re-employed, re-hired?

A. All but two.

Q. And those were Tilly Mesec and Isabelle Rectenwald, is that correct?

A. Yes.

Q. And they were asked to return, were they not?

A. Yes, sir.

Q. Do you know the circumstances concerning the requests to Tilly Mesec to return to work, who asked her, and so forth?

A. I asked Elsie Micklish, a neighbor of hers, to tell Tilly to return to work, and she said she wouldn't.

Q. Well, now you say "she said she wouldn't". Do
2521 you mean the girl reported back to you that Tilly Mesec said that?

A. Yes, Tilly Mesec said that.

Q. What is the situation with reference to Isabelle Recktenwald?

A. Miss Lang was told to tell her to return to work, and she informed Miss Lang she would not until it was all settled.

Q. Now, with the exception of those two girls, Tilly Mesec and Isabelle Recktenwald, was the list as submitted to the management complied with as far as re-employment was concerned?

A. Yes, sir.

Q. In other words, you got back every one of those that you asked for?

A. Yes, sir.

Q. And no one that you did not ask for was sent back?

A. No, sir.

Q. And if these two girls, concerning whom we have just talked, Tilly Mesec and Isabelle Recktenwald, had returned to work, as far as you were concerned, they would have been employed without conditions of any kind, is that correct?

A. Certainly.

Q. Now, some of the girls in that department who had

been working there on February 17th were asked to return, were they not, besides Tilly Mesec and Isabelle Recktenwald?

A. Yes, sir.

2522 Q. And they all came back to work who were asked except these two?

A. Yes, sir.

Q. Were any conditions imposed upon them as to anything so far as their affiliations were concerned, or their behavior, or anything of that kind?

A. No, sir.

Q. In other words, they were simply asked to return to work?

A. Yes, sir.

Q. And they all came back except Tilly Mesec and Isabelle Recktenwald, all of those who were asked, did they?

A. Yes, sir.

Q. Did you know anything as to the union affiliations or absence of union affiliations of the other girls that came back to work?

A. No, sir. I knew nothing about the union at all.

Q. What is the fact as to Tilly Mesec and Isabelle Recktenwald? Do you know whether or not they were members of Union Lodge 66?

A. No, I didn't then. I didn't know any of the girls were.

Q. You have learned since that Tilly Mesec and Isabelle Recktenwald are members of Lodge 66?

A. Yes, sir.

Q. You have seen a list of the girls in your department—No, I will put it this way: You have seen a list of the

2523 membership of Lodge 66 pasted on the application cards, have you not?

A. Yes, sir.

Q. When did you see those cards or that list?

A. Just a few days ago.

Q. Did you find on that list or among those cards the names of any girls who are now working in that department?

A. Yes, sir.

Q. How many? Do you recall?

A. I have two girls whose names were on that list.

Q. Do you know others who are working in other departments whose names appear on that list?

A. Yes, several.

Q. Did you ever talk with Joan Bissonette with reference to Lodge 66?

A. No, sir.
Q. Or Fern Gartley?
A. No, sir.
Q. Or Vivienne Johnson?
A. No, sir.
Q. Or Marguerite Seifert?
A. No, sir.
Q. I believe Joan Bissonette testified here that she had been criticized by you with reference to her attitude. Do you recall any instance of that nature?
2524 A. Well, there were different times that I talked to her about applying herself to her work. She seemed to do an unusual lot of loafing compared with the other girls in the department, and I talked to her at different times about that. I told her she could get more work out if she worked steadier. It never seemed to do any good.
Q. What would have occurred with reference to the employment of Joan Bissonette in the normal course of operations in your department had they not been interrupted by the events of February 17th?
A. Well, she would not have been let go then because we were very busy, but when we came to a slack time she would have been let out and not rehired.
Mr. Walsh: I object and move that the latter part of the answer be stricken out, as speculative.
Trial Examiner Dudley: I will allow it to stand.
Q. (By Mr. Keele.) Let me ask you this: Had the statement you just made as to what would have happened, had that been considered by you as a program, I mean, had you determined in your mind prior to February 17th to do that?
A. Yes, I had because she had provoked me so many times I intended to do that.
Q. And is that also true, and I mean by that, the answer you gave to the last question, is that also true of the other girls?
2525 A. Yes, sir.
Q. By that, I mean Marguerite Seifert, Vivienne Johnson, and Fern Gartley, and Joan Bissonette, is that right?
A. Yes, sir. Some of their work, and Joan, mostly by her attitude.
Mr. Keele: You may cross-examine.

Cross-Examination.

Q. (By Mr. Walsh.) You are a sister, I believe, of the deputy sheriff, are you not?

A. Yes, sir.

Q. He was on duty down at the plant at the time the trouble was on, was he not?

A. I believe he was.

Q. He was there most of the time, I think, wasn't he?

A. Well, I couldn't say as to that. I do not live with him. He is married and lives on the other side of town, and I don't know. I don't see him often.

Q. Did you ever discuss this union movement with anybody?

A. Anybody?

Q. Yes.

A. I probably have.

Q. Who have you discussed it with?

A. Well, that would cover several people, probably.

Q. Well, who down at the plant have you discussed it with?

A. Well, I couldn't say.

2526 Q. Well, just think a minute, and perhaps you can tell me who all you talked to down there about it.

A. Well, I wouldn't remember. I wouldn't mention any names. I probably talked to a lot of people, about it.

Q. You have been there since 1908 and you know practically all the people, I suppose, that have worked there during that time?

A. Several of them.

Q. Many of the men concerning whom this investigation is about have been employed there a great many years, have they not?

A. Yes, sir.

Q. You have been there yourself about 28 years, and I believe some of the men testified here that they had been there for twenty years, some twenty-two and some seventeen, so over the years, I presume you have become acquainted with all these people.

A. No, sir, not all of them.

Q. Well, I suppose you know the majority of them when you see them, do you not?

A. Several of them I know by sight, but not by name.

Q. Well, you know the Dreyer boys, do you?
A. Yes, sir.
Q. You probably know John Kondrath?
A. Yes, sir.
2527 Q. You know Carl Swanson?
A. Yes, sir.
Q. Did you ever discuss this union movement with Carl Swanson?
A. No, sir.
Q. Did you ever discuss the union movement with John Kondrath?
A. No, sir.
Q. Did you ever discuss it with Clarence Dreyer?
A. No, sir.
Q. Did you ever discuss it with Harold Dreyer?
A. I may have.
Q. As a matter of fact, you did, didn't you?
A. I talked with him about several subjects. I suppose it was the thing of the day.
Q. As a matter of fact, you talked to him about the union, didn't you?
A. I probably did.
Q. What did you tell him about the union?
A. I don't remember.
Q Well, supposing I tell you what you said; would you remember that?
A. I don't know.
Q. Well, how do you suppose we could best refresh your memory, then?
2528 A. I don't know. I am quite dumb.
Q. Oh, I do not think you are very dumb. You have worked down there for 29 years, and you can't be that dumb.
Mr. Keele: Well, we have a lot of people down there that were very dumb.
The Witness: Don't expose me too much among my officials. My term may be up, if you do.
Q. (By Mr. Walsh.) Well, I know it is embarrassing to talk about these things among friends of yours, among your superior officers, but I would like to know what you and Harold said about this union.
A. Harold is not under my jurisdiction, and I feel free to talk anything to Harold. He and I were good friends and we talked about many things. Even his girl friends we talked about.

Q. Well, of course, that is not a matter under investigation right now. But you did discuss the union with Harold, did you not?

A. Yes, sir.

Q. When did you and Harold talk in reference to the union?

A. I couldn't tell you.

Q. Well, did you talk to him about his girl friends?

A. I would rather not embarrass Harold.

Q. Well, all right. If that will embarrass Harold, we will not go into that, but I would like to know what you
2529 said about the union.

A. I don't know.

Q. I believe you made some remarks about outsiders coming in, isn't that right?

A. I am very sorry, but I can't tell you.

Q. Well, does the name Hill Billy recall anything to you?

A. No, sir.

Q. Not a thing?

A. No, sir.

Q. As a matter of fact, didn't you say something about the Hill Billies coming in and taking over the plant, or something like that?

A. I never talked to Harold Dreyer since the strike.

Q. No, this was before the strike.

A. No, sir.

Q. And during the time the union was being organized.

A. Hill Billy is not a word that is in my vocabulary, and it sounds strange to me since you mention it.

Q. Did you ever hear of Mr. Mills who was helping with the organization of this lodge, being referred to as a Hill Billy?

A. No, sir.

Mr. Keele: Are you making that characterization of Mr. Mills, Mr. Walsh?

Mr. Walsh: No, I am not making it. I am just inquiring of the witness.

2530 Mr. Keele: Well, I should not interrupt. I apologize.

Q. (By Mr. Walsh.) Do you remember just when you had this discussion with Mr. Dreyer?

A. No, I wouldn't know that. I probably had several discussions with him.

Q. You felt no restraint about talking to him about this union?

A. No, sir. He was not under my jurisdiction, any more than what we were as friends; he was one of my friends.

Q. He has worked at the plant quite a while himself, hasn't he?

A. Certainly.

Q. Have you known him outside of the plant?

A. I never had occasion to meet Harold outside of the plant.

Q. I see. Can you fix the time of any of these discussions, that is, prior to the trouble? I understand you haven't talked with him since the trouble.

A. It may have been after working hours. I don't have time to discuss anything during working hours.

Q. Well, at any of these discussions—I take it, you knew he was active in the organization, did you not?

A. Certainly.

Q. And I believe you were not in sympathy with the movement, is that right?

A. Certainly.

2531 Q. I presume that during the course of these discussions you exercised a lady's prerogative and spoke your mind about it, is that right?

A. Yes, sir. That is permissible, isn't it?

Q. Well, that is quite all right. I just want to know what you said, that is all.

A. Well, I don't know myself.

Q. But, you were not in sympathy with the union movement, and having no control over Harold, you felt it free to discuss it with him.

A. Yes.

Q. And I presume in the course of those discussions you told him what you thought about this union movement, didn't you?

A. Yes.

Q. And what did you feel about it?

A. I would rather not say at this time.

Q. Well, I do not see how it would do any damage now. We just want to find out what the facts are, that's all.

A. Well, don't you already know?

Q. Well, I don't know what you said, and you raised the question about your own mental capacity. I didn't. I would like to know.

A. It is very blank at the moment. I wouldn't know.

Q. You mean you think your memory on this particular occasion is rather blank, is that right?

2532 A. Yes.

Q. Well, I don't believe you are telling me all you remember, what you told Harold, not all that you remember of what you told Harold.

A. Well, I didn't keep it in mind. I don't really remember. If I did I would probably tell you.

Q. You don't like the idea, or you didn't like the idea of outsiders coming around your plant; that is true, isn't it?

A. I don't remember anything about any outsiders. Anything said by Harold about that, I think he has given the wrong information if he has said that.

Q. Well, didn't you say you didn't like the idea of an outside union there?

A. Well, that is not individually. That is the union.

Q. Well, that is what I am referring to. You didn't like the idea of an outside union around there.

A. No. We always got along without one, and I didn't see any reason for one.

Q. You thought it was not a good idea for the men to get tangled up with someone on the outside, is that right?

A. Yes.

Q. And it was along that line that your conversation with Harold took place, was it?

A. Yes.

Q. Did you talk to any other men not under your

2533 jurisdiction along that same line?

A. No, sir.

Q. And Harold is probably the only one working there that you talked to, is that right?

A. He was on that particular side.

Q. Well, that is what I mean right now, yes.

A. Yes.

Q. And then you did't discuss the question of the union with anybody but Harold, is that right?

A. That is correct.

Q. Now, I believe your production in your department is a little higher now than it was in the winter, isn't it?

A. Well, not right now. It has been.

Q. Since the resumption of business it has been a little heavier than it was before, hasn't it?

A. Yes, sir.

Q. How many girls do you have in your department now?
A. I think twenty.
Q. How many did you have before the trouble?
A. Oh, eighteen; sometimes more or less.
Q. Now, these four girls we are talking about; Marguerite Seifert, Vivienne Johnson, Fern Gartley and Joan Bissonette, they have all been replaced with apprentices, I presume.
A. There were two girls we did away with their jobs, but if they were efficient we could have transferred them.
2534 But, we didn't. They were not efficient.
Q. Which girls did you do away with, which jobs of those girls did you do away with?
A. Vivienne Johnson and Marguerite Seifert.
Q. No one has replaced their jobs?
A. No.
Q. Is that an operation that has been done away with entirely?
A. It was inspection on disks, and now we have the girls cutting disks, and they don't require as much inspection.
Q. As a matter of fact, the cutters inspect the disks themselves, don't they?
A. No, the girls assemble the parts.
Q. So you cut part of the contact in sections.
A. Part of it. Some parts we do inspect thoroughly and some parts don't require such a close inspection.
Q. Is the assembling under your jurisdiction?
A. No, sir.
Q. You just have the inspection, is that right?
A. Yes, sir.
Q. Now, was that done by Marguerite and Vivienne?
A. Yes.
Q. Now, Fern Gartley and Joan Bissonette, they are no longer required, their work is being done by new girls, is that right?
A. Yes. These other girls in the department do their work.
2535 Q. Had Fern Gartley been there very long?
A. I think it was three years, or something like that.
Q. Did she do more work than the apprentice girls did when they came on?
A. Well, about practically the same. But, Fern has never worked up to a good inspector.
Q. You felt in your mind she would never work up right, is that right?

A. No, she was too careless.

Q. I see. Now, Joan Bissonette's work is being done by a new girl, I take it?

A. Yes.

Q. And is she an apprentice also?

A. Yes, sir.

Q. Did she do more work than Joan Bissonette did, or does she do more work?

A. She does about forty per cent more than Joan Bissonette did.

Q. She has been on the job now how long?

A. Well, she did right at the beginning.

Q. She was very apt, was she?

A. Well, the first day she did even more work than Joan did.

Q. What led you to want Tilly Mesec and Isabelle Recktenwald back?

A. Well, they were average workers and Isabelle was fair.

2536 Q. That is Isabelle Recktenwald.

A. Yes. She could probably improve. She is a girl that I think would improve. Tilly was not so fast, she was a very good girl in the department.

Q. That is Tilly Mesec?

A. That is Tilly Mesec. She was easy to get along with. She had very bad eyesight and, of course, that was no fault of hers, but I intended to give her another chance and she refused.

Q. You knew at that time these girls were members of the Lodge, is that right?

A. No, sir.

Q. Well, you sent someone to see them and ask them to come back?

A. Yes, sir.

Q. And upon their refusal and your discovery they were members of the Lodge, would you still have them back in the department even though they were members of the union?

A. Why, certainly.

Q. You felt they would fit into the operation of the department as reorganized?

A. Certainly.

Q. And be all right, is that right?

A. Yes, sir.

Q. Now, how many apprentices do you have in the
2537 department now?

A. Five, I think.

Q. In the operation of the plant do you foremen have meetings from time to time?

A. No, sir.

Q. You never had a foremen's meeting?

A. No, sir, I suppose we have had, but it is not a customary occurrence.

Q. It is not customary?

A. No, sir.

Q. I presume you have known Mr. Anselm ever since he has been with the company, too, have you not?

A. Yes, sir.

Q. Did you see him and talk to him after he returned on September 8th?

A. Yes, I did.

Q. Did you advise him that the union from the outside was getting in?

A. No, sir.

Q. You didn't?

A. I never talked union affairs to him.

Q. Did you ever talk to Mr. Aitchison?

A. No, sir.

Q. Now, you knew this union was getting in and you felt it was not a good thing and you did not report that to
2538 your superior officer.

A. No, sir.

Q. Well, why didn't you report it?

A. Well, I was attending to my own business. They are capable of knowing that themselves. I don't think I have to talk like that to my superior officers.

Q. You felt Mr. Anselm was familiar enough with what was going on so that he could find out himself, is that right?

A. Certainly.

Q. Do you know whether he did find out?

A. No, I don't.

Q. Have you told me everything you can remember about what you said to Harold and what Harold said to you?

A. Did I tell you anything?

Q. Yes. You told me a lot.

A. Well, I told you we discussed everything and we discussed the union. I thought I had a perfect right to talk to him. He isn't under my jurisdiction.

Q. I take it, your opinion has not changed any since you talked to Harold?

A. Certainly not. If I meet him again I will talk to him again about it.

Q. You will again speak your mind.

A. Certainly.

Q. Of course, that is a lady's privilege. Of course,
2539 I would like to extend to you the privilege of having the last word, and I would like to have you tell me what else you said about this union.

Mr. Block: I think that is objectionable. He has gone into that at least a dozen times. She has done the best she can.

Mr. Walsh: I think probably I will go into it a little longer, Mr. Block.

Mr. Block: Well, I don't know whether you will or not, but I am discussing the propriety of it. I don't know whether you will or not under the circumstances.

Trial Examiner Dudley: You can tell us anything else you remember about it.

The Witness: Well, I talked to Harold so many times I don't remember. I couldn't go into detail about the conversation. We have had arguments and all that about everything, but it never impressed me as being so important that I could remember it.

Q. (By Mr. Walsh.) Did these arguments get pretty heated?

A. Certainly. The next day we would greet each other with a good morning, and it was all right.

Q. Oh, that's all.

A. Well, it is all in a day's work. I had arguments with a lot of people in the plant.

Q. You argued with several people in the plant, is that right?

2540 A. (No response.)

Q. Joan Bissonette said you argued with her. Is that right?

A. I may have. She was under my jurisdiction. It was about her work probably.

Q. Well, of course, that was in the line of duty, correcting the mistakes she was making, because she was not applying herself to the job, is that right?

A. Yes.

Q. Did you argue with Frances Fellens?

A. No, she is not under my jurisdiction.

Q. Did you have any arguments with Vivienne Johnson?
A. No.
Q. Or with Marguerite Seifert?
A. No, sir.
Q. Or with Fern Gartley?
A. No, sir.
2541 Mr. Walsh: That is all.
Trial Examiner Dudley: We will take a short recess.
(Whereupon a recess was taken.)
Mr. Keele: Mr. Groll.

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P.V. 165 175244 S.C.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 436

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FANSTEEL METALLURGICAL CORPORATION

Vol. III

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6606

FANSTEEL METALLURGICAL CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Counsel for Petitioner:
MR. BENJAMIN V. BECKER,
MR. MAX SWIREN,
MR. DON M. PEEBLES,
MR. HAROLD M. KEELE,
MR. SIDNEY H. BLOCK,

Counsel for Respondent:
MR. CHARLES FAHY,

Petition for Review of order of the National Labor Relations Board.

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No. 37—Check to the National Office Supply Company in the amount of $3.60, signed by Lawrence Bristol as Treasurer and dated June 1st	1321	1853
No. 38—Check payable to Bert Holt (in charge of North Chicago Auditorium) in the amount of $3.00, drawn on the First National Bank of Waukegan and dated June 1st	1321	1855
No. 39—Excerpt from Section 376 of the Criminal Code of the State of Illinois known as the "Intimidation Section"	1329	1857
No. 40—Excerpt (or printed booklet itself) from Section 46 (referred to in book as Section 139 and entitled "Conspiracy to do Illegal Acts")	1329	1857

	Offered in evidence at page	Reproduced at page
No. 41—List of persons named in membership cards submitted in evidence as Board's Exhibits Nos. 18, 19 and 20, who are no longer employed by company, the reason of their not being so employed, and the dates of severance of the employment	1339	1859
No. 42—Pink card of Orlin Swanson showing dues paid by various members of Lodge 66	1515	1861
No. 43—196 cards from September 1st to September 15th, excluding foremen, which were in the racks adjoining the clocks in Buildings 3 and 5 (production and maintenance employees)	1519	1552
No. 44—11 foremen cards of same group as those mentioned in Exhibit No. 43	1519	1552
No. 45—197 cards of production and maintenance employees for the last half of September, 1936	1519	1552
No. 46—11 foremen cards for same group as those mentioned in Exhibit No. 45	1519	1552
Intermediate Report by Trial Examiner dated Sept. 2, 1937		1863
Application of Fansteel Corporation for extension of time for filing exceptions and letter stating same was denied		1905
Statement of Exceptions of Fansteel Corpn. to Intermediate Report, etc.		1907
Motion of Lodge 66 of The Amalgamated Ass'n. of Iron, Steel & Tin Workers to extend time for filing Exceptions to Intermediate Report		1939

Statements of Objections and Exceptions of Lodge 66 of The Amalgamated Ass'n. of Iron, Steel & Tin Workers 1941
Order extending time for filing exceptions by Amalgamated Association to Intermediate Report.....1943
Decision, Findings of Fact and Conclusions of law.....1944
Order dated March 14, 1938, to cease and desist.....1970
Affidavit of service and Post Office return receipt...1972-1973
Certificate of National Labor Relations Board.....1975
Proceedings in U. S. C. C. A., Seventh Circuit 1979
Clerk's certificate 1979
Caption 1979
Minute entry of argument and submission 1980
Opinion, Sparks, J. 1980
Concurring opinion, Lindley, J 1990
Dissenting opinion, Treanor, J. 1991
Judgment 2000
Clerk's certificate 2000
Order allowing certiorari 2002

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ALBERT GROLL, recalled as a witness for the respondent and having been previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Keele.) Mr. Groll, you testified in this case before, didn't you?

A. Yes, sir.

Q. In what capacity have you served the Fansteel Metallurgical Corporation?

A. Tool room foreman.

Q. Tool room foreman?

A. Yes, sir.

Q. You have been a tool room foreman since November, 1936, is that right?

A. Yes, sir.

Q. Is that correct?

A. Since the 16th.

Q. Since the 16th of November, 1936?

A. Yes, sir.

Q. Now, Mr. Aigner was employed in that department, was he not?

A. Yes, sir.

2542 Q. And Mr. Hoff?

A. Yes, sir.

Q. What were the duties of those two men, Aigner and Hoff?

A. Mr. Aigner was janitor who swept the floor. He just swept the floor only.

b. What are the dimensions of that department?

A. About 30 feet wide by about 135 to 140 feet long.

Q. Were his activities confined merely to that department?

A. Yes, sir.

Q. Merely to that area of 30 by 135 feet?

A. Yes, sir.

Q. What did Mr. Hoff do?

A. He took care of the tool crib.

Q. What do you mean by the tool crib?

A. The place where we keep the tools, such as drills, reamers, tool bits, and everything that would be used by the machines on that floor.

Q. Small tools?

A. Yes.

Q. Tools that are not set up but small enough to be placed back in a certain place when they have finished using them?

A. Yes.

Q. Do you have a check system on the tools in the tool crib?

A. No, sir.

2543 Q. Well, then exactly what did Mr. Hoff's duties consist of?

A. Well, when a man wanted a drill or a reamer, he just came in and asked Mr. Hoff for it.

Q. And Hoff handed it out?

A. Yes, sir.

Q. And made no record of it?

A. No.

Q. And when the man was through with it he brought it back to Hoff and Hoff replaced it?

A. Yes.

Q. Is that all he did?

A. Well, once in awhile I would give him a requisition to go over to the stock room for a piece of stock and they generally delivered it to me. He just took the message over there.

Q. He acted as a messenger boy?

A. Yes, sir.

Q. That is the extent of the duties of those two men?

A. Yes.

Q. Did you ever recommend the dismissal of those two men?

A. Yes.

Q. In September, did you ask for their replacement?

A. Well, I asked for the replacement of Mr. Hoff.

Q. To whom did you address that requisition?

2544 A. To Mr. Anselm.

Q. What reason did you assign for your request?

A. Well, I would like to have a younger man that I could have take care of that crib and also the tool grinding. Sometimes when the tools would be brought back, they would need grinding.

Q. Sharpening?

A. Sharpening. A younger man, I could have broken him in on a grinder to take care of that work, which he had plenty of time to do.

Q. And did you believe that Hoff was unable to do both of those jobs, that is, grinding and handling the crib?

A. Yes, sir.

Q. Is that the only reason that motivated you in requesting his replacement?

A. That is all.

Q. Was he replaced at that time?

A. No, sir.

Q. How old a man, in your opinion, was he, if you knew, in your opinion, how old was he or how old is he now?

A. I think he is in the neighborhood of around 72 or 74, somewheres in that neighborhood.

Q. How old was Aigner, or how old is he?

A. Well, at that time I heard he was around about 75 or 76.

Q. Were there any other men in that department in
2545 their seventies?

A. No, sir.

Q. Now, after February 26th or during the period of February 17th to the 26th, at any time after February 17th—let me put it that way—did you make any request for the return of Hoff and Aigner, Mr. Groll?

A. After the 26th?

Q. Well, after the 17th, let me say; after the men seized the plant.

A. Not until I started up down there again after the 27th.

Q. Did you then make a request for the replacement?

A. No, sir, I never made a request for them.

Q. What did you do with reference to them?

A. Well, Mr. Anselm asked me for a list of the men I wanted back in my department and I gave him the list.

Q. Yes. Were the names of those men on it?

A. No, sir.

Q. Why not?

A. Well, because I thought I would like to have a younger man on there so he could take of that whole department, which he could do.

Q. That was the only reason?

A. Yes, sir.

Q. It was not any question involved there as to whether or not those men were members of Lodge 66, whether
2546 Hoff and Aigner were?

A. No.

Q. Did you know?

A. I didn't know, no, sir.

Q. Did Mr. Anselm say anything to you or did you say

anything to him about that list containing the names of men who were in Lodge 66 or failing to contain in that list the names of men in Lodge 66?

A. No, sir.

Q. There was no discussion on that point?

A. No, sir.

Q. All right. Now, who replaced those men?

A. I put one man in there, a fellow by the name of Ed. Tompkins.

Q. What does he do in there?

A. Well, he takes care of the crib, sweeps the floor, and also takes care of production jobs that I have there.

Q. In other words, this man Tompkins now does the job that both those men did and does production work in addition?

A. Yes, sir.

Q. What is his age?

A. About 23.

Mr. Keele: You may cross-examine.

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Groll, what changes were 2547 made in the tool room after the plant reopened?

A. What do you mean, any change? How do you mean?

Q. Were there any changes made?

A. I beg your pardon?

Q. Were there any changes made?

A. No, sir, there were no changes whatsoever. We have worked on the same basis we always have.

Q. Now, are the dies being made there that were being made there before?

A. Dies are all being made on the outside.

Q. Then, there was a change made, was there?

A. Yes, sir, in that respect.

Q. Well, now, I believe you have among other people in the tool room Rayner, Wells, Moxey, DuBois and Kondrath?

A. No, Kondrath didn't work for me.

Q. He didn't work for you?

A. No.

Q. And the other four did, is that right?

A. Yes, sir.

Q. Now, did you get new men to replace those fellows?
A. I only have taken two.
Q. You haven't replaced all four jobs, is that right?
A. No, sir.
Q. Whose jobs have you replaced?
A. DuBois and Rayner.
2548 Q. And Wells' and Moxey's jobs haven't been filled, is that right?
A. That is right.
Q. For what reason have they not been filled?
A. That work is being done on the outside.
Q. What work is that?
A. Well, such as swaging dies, heading work, and so forth.
Q. Wells and Moxey were making swaging dies?
A. Wells was, yes, sir, but Moxey was not making swaging dies.
Q. Well, you must have other work being done on the outside, don't you?
A. I have.
Q. What other work?
A. Swaging dies are made on the outside and a lot of lathe work and a lot of machine work.
Q. But the work these two men were doing was not swaging dies or lathe work, was it?
A. Who?
Q. Moxey, for instance?
A. No.
Q. Well, what work were they doing then?
A. Moxey made a lot of small heading dies for me.
Q. Is that work now being done on the outside?
A. No, sir.
2549 Q. Who is doing that work?
A. Elmer Rehmer.
Q. He is an old employee that returned to work, is he?
A. Yes.
Q. What work was Moxey doing?
A. Making heading dies.
Q. Who is making those now?
A. Elmer Rehmer.
Q. So Rehmer is now doing the work that Wells and Moxey did do, is that right?
A. He is doing the work that Moxey did.
Q. Well, who is doing the work that Wells did?

A. Nobody is doing that. Wells' work, he worked with Berquist and Hook. He worked with these two men on repairs and the grinding of terminals in sintering frames.

Q. Now, I believe at one time you had a dispute with DuBois about cutting off a bar, did you not?

Mr. Swiren: That is objected to. That is not proper cross-examination. That was not gone into in the direct.

Mr. Walsh: We went into this quite thoroughly the other day.

Trial Examiner Dudley: I believe Mr. Swiren brought that out on cross-examination sometime ago, and it was not a part of the direct then, either.

Mr. Swiren: No, that was a question of threats.
2550 That was in connection with threats that had been made with respect to discharging employees in connection with union activities, and I brought out what the alleged threats were and it turned out they were not connected with union activity at all.

Mr. Walsh: Well, this is the other half of that dispute.

Mr. Swiren: That was cross-examination of Mr. DuBois in connection with his contract.

Mr. Walsh: Well, this is cross-examination of this witness.

Mr. Swiren: I insist it is not cross-examination in any way.

Trial Examiner Dudley: The objection is overruled.

Mr. Walsh: Let us have this department head tell us about it.

A. I had a piece of steel and had DuBois making some rolls that we use in rod pullers, and there was quite a bit of work to be done on these rod pullers. I had a piece of steel about three and a half inches in diameter. I told him to put that piece of steel in the saw and saw off this steel and he could work on his other work at the same time at the bench. Well, I went back there to the saw later on and he had his saw in there and he was sitting on a chair. I asked him to go back to work on the bench. He says he isn't running
2551 two machines at one time. I says, "Ray, I don't consider a man working here is running two machines at one time." I says, "You don't do it any place else. You don't do it in any place." I says, "I don't mean if a man has got a piece of steel he is waiting for or something like that, but as long as you have other work to do, and you have a big piece of steel like that, I expect you to go back on your bench."

When your steel is sawed off it will fall on the floor and the saw will stop. It doesn't require any attention whatever.

Q. There is nothing that could happen to the saw if there is no one there to attend to it, is that right?

A. That is right.

Q. Nothing could happen to the steel, if there is no one there to attend it, is that right?

A. That is right.

Q. Now, how far is it from DuBois' bench to the saw?

A. About 60 feet.

Q. And you want him to run a machine at his bench and run the saw at the same time, is that right?

A. Well, he didn't have no machine on his bench. He had a lot of bench work there. This was laying out his work and getting ready for drilling.

Q. Supposing a belt would stick on that saw, what would happen?

2552 A. It would come off. That's all.

Q. Then, what would happen?

A. Then, the saw would stop.

Q. Supposing the steel fell out of the saw?

A. It would not fall out if the man clamped it in there tight.

Q. It would after it was cut off, wouldn't it?

A. The piece that was sawed off would fall on the floor.

Q. Supposing that hit some one?

A. It had only 14 inches to fall on the floor and there was nobody back there back of the saw.

Q. Then, I think you had a discussion about the running of two machines, didn't you?

A. No.

Q. What was the discussion about?

A. I told him to lay his piece of steel in the saw and go back on his bench and do his other work.

Q. What did he say to you?

A. He thought he was running two machines and I told him I didn't expect him or anybody else to run two machines but I don't think it is necessary for a man to put a piece of steel in the saw that size and stand there and wait until it is done.

Q. Yes.

A. They don't do it in any other shop.

2553 Q. Did he say anything to you about it?

A. Well, he considered he is running two machines, but afterwards he went back.

Q. Did you discuss anything else with him at that time?
A. No, sir.
Q. Where had you worked before you came here?
A. The Achme Machine & Tool Company in Chicago.
Q. How long were you there?
A. I was there about five or six months.
Q. When did you leave the Achme?
A. On about the 14th day of November.
Q. Two days before you came here?
A. Yes, sir.
Q. Did you leave that place to come to the Fansteel Metallurgical Corporation?
A. Yes, sir.
Q. Where did you work before you worked for the Achme?
A. Oakes Products Corporation.
Q. How long did you work at Oakes?
A. About six and a half years.
Q. You had some labor trouble over there at Oakes, did you not?
Mr. Swiren: That is objected to.
Mr. Walsh: That is cross-examination. I have a right to test the witness' credibility.
2554 Mr. Swiren: I have a right to talk to the Examiner without being interrupted. That is not material at all to this plant. Whether the Oakes plant has labor trouble or not is not one of the issues here.
Trial Examiner Dudley: It may be admitted.
Mr. Swiren: I think it ought to be confined to direct contact with this witness and not some other corporation.
Trial Examiner Dudley: You may answer, Mr. Groll.
What is the question, Mr. Reporter?
(The question was read.)
A. I didn't, no.
Q. (By Mr. Walsh.) Well, the company had some trouble, didn't it?
A. Yes.
Q. You assisted in the company's affairs during the conduct of that affair, did you not?
A. Not as a strike. I was in charge of the tool room. I was master mechanic of tools and dies.
Q. I see. And that is where the trouble broke out, wasn't it?
A. No, sir.
Q. Where did the trouble break out at Oakes?

A. In the polishing room.
Q. Did you have any supervision of that at all?
A. No, sir.
2555 Q. And did you bring in extra workers to carry on the business of the company during the progress of that strike?
Mr. Swiren: That is objected to. That is not material to the situation here.
Trial Examiner Dudley: The objection is overruled.
Q. (By Mr. Walsh.) You may answer.
A. Did I bring in extra workers? I don't understand what you mean by extra workers.
Q. Well, let us put it very frankly; did you use any strike-breakers?
A. I beg pardon?
Q. Did you use any strike-breakers?
A. No, sir.
Q. You didn't use any in your department?
A. No, sir.
Q. Do you know whether the company used any?
A. No, sir.
Q. Did they shut down their plant during the strike?
A. No, sir.
Q. They kept right on working?
A. Yes, sir.
Q. Did they hire anybody to work in there while the strike was in progress?
Mr. Swiren: Just a minute. May we have an objection noted to this entire line of questioning? It is not ma-
2556 terial, what the Oakes Company did.
Trial Examiner Dudley: You may show your objection.
Q. (By Mr. Walsh.) You may answer.
A. Just the regular employes we had there.
Q. And no strike-breakers at all?
A. No, sir.
Q. No extra employes?
A. No, sir.
Q. Of course, you are here to tell us the truth, are you, Mr. Groll?
A. Yes, sir.
Q. You think you are telling us the truth, do you?
A. I know it to the best of my ability.
Q. Of course, I don't want to confuse you. I just want

to find out what the facts are. Where did you work before you went to Oakes?

A. The Cincinnati Victor Company.

Q. Where is that?

A. At Cincinnati, Ohio.

Q. What did you do there?

A. Tool room foreman.

Q. How long were you there?

A. Two years.

Q. Did you leave there to go to the Oakes Products Corporation?

2557 A. Yes, sir.

Q. How long a time intervened between the time you were with the Cincinnati Victor Company and the time you went to Oakes Products?

A. I left the Oakes Products on the 27th of February, 1930 and I started out at Oakes Products on the 1st of March.

Q. You made a mistake; you said you left Oakes Products, I understood, and I think you meant you left the Cincinnati Victor Company.

A. I left the Cincinnati Victory Company to go to Oakes Products.

Q. Now, you had some labor trouble when you were at the Cincinnati Victor Company, did you not?

A. No, sir.

Q. Not during the time you were there, is that right?

A. I never did. We never did have any at that company.

Q. All right. How many men are employed in the tool room now, Mr. Groll?

A. Eleven.

Q. How many were employed there before the trouble commenced?

A. About 16 or 18. 16.

Q. So there are five jobs that are not filled, is that right?

A. Yes.

2558 Q. How many of those 11 men are men who have been hired since February 26th?

A. Four. In fact, I got two departments. In the tool room I only have eight.

Q. That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) What was your last answer?

A. I have eight in the tool room and three in the screw room.

Q. I see. You have two departments?

A. Yes.

Q. Ed. Ruck was under your jurisdiction, was he not?

A. Yes, sir.

Q. He was not re-employed, was he?

A. No, sir.

Q. When you submitted the list of names to the superintendent for re-employment, did you include Ed. Ruck's name?

A. I don't think I did.

Q. Did you include Rayner?

A. No, sir.

Q. Did you include Wells?

A. No, sir.

Q. Moxey?

A. Yes, sir.

Q. DuBois?

2559 A. No, sir.

Q. Why didn't you include those men, Mr. Groll?

Mr. Swiren: That is objected to. That is not part of the direct examination. The direct examination was confined to two men.

Trial Examiner Dudley: It may be admitted.

A. What was the question?

(The question was read.)

A. Well, because them men didn't seem to want to cooperate with me the way I would like to have it.

Q. (By Trial Examiner Dudley.) In what way did they evidence their lack of cooperation, Mr. Groll?

A. Well, I would ask them to do something and they would go about it in their own way to do it, and the time they would take to do it would be so long to do it. They wanted to leave the department whether a job was in a hurry or not. They simply left the department and would be gone.

Q. Well, Moxey has been there 24 years, has he?

A. I wouldn't say that, I don't know.

Q. So for this lack of cooperation with you, you felt they had better not be returned to their work, is that right?

A. That is right.

Q. Are they all good mechanics?

A. Well, from my past experience I would say I have saw a lot better.

2560 Q. You have seen better mechanics?

A. Yes.

Mr. Swiren: I suggest, Mr. Examiner, that we ought not have any comments or remarks from the audience here. This ought to be treated by them as seriously as it is. They may not agree with the opinions, and yet they can get on the witness stand if Mr. Walsh wants to call them.

Trial Examiner Dudley: You may proceed.

Mr. Walsh: I move that counsel's remarks be physically stricken from the record.

Mr. Keele: Well, you will admit there was a demonstration here?

Trial Examiner Dudley: I will leave the remarks in the record but I do not know as to the demonstration.

Q. (By Mr. Walsh.) I suppose you have seen better foremen than you are, probably, from time to time, have you?

A. Probably, yes.

Q. The variations in these mechanics and other mechanics that you have seen are purely personal variations, are they not?

A. No, I would not say they are.

Q. Were they as a class of mechanics, of a lower grade than most mechanics?

A. Well, from the class of work that they done it doesn't require a mechanic; what I mean by that, a first class

2561 tool and diemaker.

Q. Does not require a first class worker. Is that right?

A. I beg pardon.

Q. You say it does not require a first class worker?

A. Very little of it requires a first class man.

Q. Are any of these men we have been discussing here first class men?

A. Well, I never had enough work from them to say, but on certain jobs, I would give them, the way they went about their job and the time they would take to do the job, I judged from that.

Q. Yes. Of course, you had been there only just about 90 days, hadn't you, when the trouble broke out?

A. Yes.

Q. From November 16 to February 17.

A. Just about 90 days.

Q. And you, of course, during that period of time had an opportunity to observe these men perform all the tasks which they formerly had to perform, is that right?

A. Yes.

Q. And you were able at that time to form an opinion that the men who were not recalled were not good workmen, is that right?

A. Well, they would not do the work just the way I would ask them to go about it and with the time it would take
2562 them to do a job, I thought it was too long.

Q. Of course, your objection was mainly that of doing it the way you wanted it done, is that right?

A. Not doing it the way I wanted it done, and the time it would take them to do it, and not stay on the job. Whenever they got tired they would just get up and walk away in another department.

Q. All right. The work these men were doing was not production work, was it? I mean by that, they didn't produce great quantities of any kind of a thing, did they?

A. No.

Q. There were many and unusual kinds of jobs to be done, were there not?

A. Well, unusual kinds, I would say, yes. Not out of the ordinary, though.

Q. Now, you had never worked in a factory and worked tantalum, had you?

A. No.

Q. And you had never worked in a factory that had worked tungsten before, had you?

Mr. Swiren: I object to that. The man's experience is not for the Board to judge.

Trial Examiner Dudley: The objection is overruled.

A. Well, in the class of work I have done, I have worked a lot of steels and brass and tantalum metal and from
2563 what I saw up there, there is a lot of drawing work to it, such as drawing dies, work I can be able to take care of, and as far as blanking dies for tungsten or such small dies is concerned, as we have, I think I am capable of making them.

Q. (By Trial Examiner Dudley.) However, you had never seen any work done on this kind of metal before you had come to this plant, had you?

A. No, sir.
Q. You had never seen any work done on tantalum or tungsten?
A. No, sir.
Q. You had never had any experience in making tools and things such as that are used to work this particular kind of metal, had you?
A. Yes, I have made all kinds of tools.
Q. Did you ever make any tools to make tantalum?
A. Well, tools that I have made could be used for working tantalum.
Q. Where did you make tools that were used for working tantalum?
A. Well, I say they could be used if they had to be used.
Q. Oh, I see. That is all.

Redirect Examination.

Q. (By Mr. Keele.) Did your department have anything whatsoever to do with the tantalum or tungsten departments?
2564 A. It had nothing to do with the tantalum. Oh, once in awhile we will make a small blanking die for tungsten, such as a little disk.
Q. That is the only connection, is it?
A. Yes, sir.
Q. So the questions just put to you with reference to working these tools were prompted by Mr. Walsh's information with reference to the way the plant is worked there, is that right?
A. Yes.
Q. Was Mr. DuBois a first class workman?
A. A first class workman?
Q. Yes.
A. Well, he could work if he wanted to.
Q. I see.
A. And if he didn't want to, well—
Q. And he was quite an expert in not wanting to, wasn't he?
A. Yes, sir.
Mr. Walsh: I object to that unless you say what happened.
Q. (By Mr. Keele.) Well, for instance, an example of that would be his wish for the 40 minutes required to saw that steel bar through, is that right?

A. He was sitting there waiting for it, yes, sir.

Q. How long did it take, do you know?

2565 A. Well, I couldn't tell you exactly but based on experience I would say it would take 30 or 40 minutes to saw off a piece of steel. You can stretch the job out if you want to, by how much pressure you put on the blade.

Q. And he was sitting there watching the saw work.

A. Yes, sir.

Q. All that operation consisted of was a saw going through a piece of steel and the only thing that could happen there, as I understand it, is that the blade might come off, the saw might break, or the steel could be sawed through, none of which will do any damage, is that right?

A. That is right.

Q. And it is the regular practice, isn't it, in machine shops or tool rooms for a man sawing through a good sized piece of steel, to go back to his own work?

A. Yes, in all shops I have been working in, or had charge of.

Q. Was Mr. DuBois or you the foreman there that day?

A. I was.

Q. Oh! So, it was really a question under the practice as to whether your orders were to be carried out or his wishes, is that right?

A. Yes, sir.

Q. And there was some doubt about it, as it developed?

A. As far as he was concerned, there was, yes.

2566 Q. Was there a deliberate effort in your opinion to slow down the productivity or the operation of that tool room in January, 1937?

A. To slow it down?

Q. Yes. To do less work than would normally be done, or could be done.

A. Well, I was trying to build the speed up.

Q. Well, I am asking you if there was a deliberate effort to slow it down on the part of these men?

A. Yes.

Q. On what do you base that statement?

A. Well, from what I would get. I would go around and show a man how speeds and the feeds of a machine would run, and I would set it and I would go back and it would be back to one notch feed.

Q. Well, what does that mean. We don't know.

A. It was a deliberate holding back.

Q. In other words, you would get the speed up to a proper speed and come back and find it was set at a lower speed?

A. Yes.

Q. Were there many instances of that?

A. Quite a few.

Q. Well, about how many?

A. Well, I had trouble with that all the time in getting my work out.

Q. Who were the men that did that, or some of them?

2567 A. Well, I just couldn't say who did it, who told them to set it down.

Q. Well, who actually were operating the machines where the speed was reduced against your orders?

A. I had most of that done on my shaper work. Gilbert Haney, and Joe Petraitis worked on those machines.

Q. Anyone else?

A. Well, there were several jobs. I had one job on some big disks we were spacing off. I had one man, he could do the job in three hours, and another man it would take ten to twelve hours to do it.

Q. Was that a question of his actual work or the speed at which he set the machine?

A. According the way he would set the machine.

Q. It was not a question of his manual effort?

A. No.

Q. Or skill?

A. No, sir, it was just a matter of setting the feed on the machine.

Q. Did you ever learn whether any orders were given to slow down the speed of the machines?

A. Yes.

Q. Who gave those orders, do you know?

A. No, I do not.

Q. You don't know that?

2568 A. No.

Q. But you did find out that an order had been given?

A. I heard there were orders given out to slow down.

Mr. Walsh: I object to that unless he states who told him.

Mr. Keele: Well, this is the first objection on the hearsay rule.

Mr. Walsh: Well, he can tell who told him.

Q. (By Mr. Keele.) Who told you that?
A. Well, I can't recall the man's name. The man that really told me was the man I hired on the 17th of February. He came in and asked me for a job and I hired him. He said he understood that he was not allowed to run two notches feed on a machine. He said, "God help you if you do." He said, "You will run one notch and one notch only."
Q. That was on the shaper?
A. Yes, sir.
Q. That was the day the men took over the plant?
A. Yes, sir.
Q. That was in the morning.
A. Well, I heard this man say that, he said it to me. I hired him the day before that and he came to work. I hired him on the 16th and he came in on the 17th.
Q. Did he say where he got that information?
A. No, sir, he didn't say.
2569 Q. He said that was on his understanding, did he?
A. That was his understanding, yes. He was not allowed to take two notches, or he wasn't allowed to take a two-notch feed on that machine.
Q. Did you tell him to run two notches?
A. No, sir. I told him I expected him to do what a machine would do. If he didn't understand the speeds and the feeds I would help him out.
Q. Now, Mr. Groll, you said you worked for the Achme.
A. Achme Machine & Tool Company.
Q. Yes. Isn't it a fact that they had a strike on February 15th, 1892?
A. The Achme Machine & Tool Company?
Q. Yes. Do you know anything about that?
A. No, sir.
Q. Do you know about the strike they had in 1907?
A. No, sir, I never was up in this part of the country at that time. I just came up to Waukegan in 1930.
Q. Well, have you ever been in the United States Army?
A. No, sir, I wasn't. I wasn't old enough at the time of the war.
Q. You knew the United States Army had acted as strike breakers in the Pullman strike, did you?
A. I have heard of it.
Q. Now, that company down in Cincinnati that you
2570 worked for what company was that?
A. The Cincinnati Victor Company.

Q. Do you recall the strike they had back in 1899?
A. No, sir.
Q. Do you know that they had had one back there?
A. No, sir.
Q. Did you ever use the bus system in Chicago?
A. Well, no, I don't think I have.
Q. You have never ridden on the buses?
A. No.
Q. Was that because they had had a strike and you didn't want to be mixed up with anybody that had a strike?
A. No. I always drive my own car.
Q. Oh, I see. Is that made by General Motors?
A. Yes, it is.
Q. That is all.

Recross Examination.

Q. (By Mr. Walsh.) Were you ever admitted to practice law?
A. No.

Redirect Examination.

Q. (By Mr. Keele.) Mr. DuBois is, though, isn't he?
A. I couldn't say.
Q. Haney was rehired, wasn't he?
A. Yes.
Q. He was one of the men who had cut down the 2571 speed on his machine?
A. Yes.
Q. And Petraitis was not rehired?
A. That is right.
Q. And he was one of the men who had cut down the speed on his machine, is that right?
A. Yes, he was.
Q. What is the name of the man you hired on February 16th who told you nobody in the plant was allowed to operate over one speed on the machine?
A. A man by the name of Parker. I forget what his first name is.
Q. Is he still working there now?
A. No, sir. On the day of the 17th he left and I talked to him and met him coming out of the plant and he said he didn't want to be mixed up in anything like that. He wanted to get out. He came out with his tool box.
Q. I see. You say you have never seen him since?

A. No, sir.

Q. These facing disks, who were the men who took 12 hours to face these disks, and who were the men who only took three hours to do it?

A. A fellow by the name of Mertins took three hours. I forget what his first name is. And the other man I had in there by the name of Ted Ohlson, why it took him around
2572 ten to twelve hours to do it.

Q. Ten to twelve hours?

A. Yes, sir.

Q. The same work.

A. The same work and the same machine.

Q. The same amount of work to be done?

A. Yes.

Q. It took Ohlson twelve hours to do it and Mertins three hours. Is that right?

A. Three hours to do the job.

Q. Now, are these instances of Haney and Petraitis cutting down the speed of the machines in facing up these disks the only instances you know of that slowed down the work there?

A. Well, there were a lot of instances that went right on through.

Q. Do you know whether Ohlson had any difficulties with his machine, or anything like that?

A. Well, I know he didn't because lots of times I would go there and look for him and couldn't find him. He would be gone. The type of this disk that we had was used for a lapping and I wanted an exact finish on it so it would hold the lapping compound in the little grooves that would be in there, and by setting the speed on this machine going across the disks it would give that to me.

Q. Now, you, of course, reported this to the plant
2573 superintendent on the regular written reports, did you not?

A. Yes, sir.

Q. And those reports would be a matter of record in the office, in the company's office?

A. No, sir.

Q. They would not?

A. No, sir.

Q. What would become of those reports?

A. It was just a word of mouth.

Q. You didn't write out any report of this, of this slowing down that was going on in your department, is that right?

A. That is right.

Q. You don't know whether this department operated like that before you came there or not, do you?

A. I never had my foot in the plant until the 16th of November.

Q. That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Groll, may I ask you how much salary you are now paying to Mr. Edward Tompkins?

A. 50 cents an hour.

Q. Do you know offhand what Aigner and Hoff got?

A. I think Hoff got 45 cents, and I think Mr. Aigner got the same amount.

Q. Did Alfred Johnson work under your supervision?

2574 A. No, sir.

Q. Did he work near Mr. DuBois' machine?

A. No, he didn't. He would work on it once in awhile. Once in awhile he would. He would work on the shaper or some place like that.

Q. Where did he work?

A. He worked for Mr. Phillips in a sort of experimental room that we have in the back of the office.

Q. Was the work that Mr. Johnson did visible from Mr. DuBois' machine?

A. It was, yes.

Q. How far away was it?

A. Oh, sometimes he would be about 20 feet, 15 or 20 feet.

Q. Did Mr. Johnson operate a machine?

A. He would.

Q. Did he make dies?

A. No, he did special work, he had special work that he worked on.

Q. Under whom did he work?

A. Under Howard Phillips, Master Mechanic.

Q. That is all.

Q. (By Mr. Keele.) Are you talking about John Kondrath or Alfred Johnson?

A. He is talking about Alfred Johnson who works
2575 for Howard Phillips.

Q. (By Trial Examiner Dudley. Alfred Johnstone, it is.

A. Oh, that is a different man. I am thinking of Alft. Simondson.

Q. (By Mr. Keele.) The testimony you gave is incorrect, then?

A. Yes.

Q. (By Trial Examiner Dudley.) Well, does Alfred Johnstone work under your supervision?

A. Yes.

Q. What kind of work does he do?

A. Very poor. I have had him working on several jobs. I had him on one job of graphite moulds that we made and I had to have him do it over, do these moulds over three times.

Q. Did he finish these graphite moulds?

A. Yes, sir.

Q. And did you have to take any work from him that he had started and give it to somebody else to do?

A. Well, he worked there for me awhile but it seemed as though he could not do the work, and he always had trouble. It seemed as though he had trouble with his wife. He would work a day and be off a day. Maybe he would be off two or three days and toward the end there, I couldn't depend on the man so I had to dismiss him.

Q. How long did he work for you?

2576 A. It must have been a matter of about four weeks.

Q. About when was it that you dismissed him?

A. It must have been along about the middle of December.

Q. That is all.

Recross Examination.

Q. (By Mr. Walsh.) Would he stay in the department?

A. Yes, he seemed to stay there pretty good but it seemed as though the man was not mechanic enough.

Q. He was kind of an old man, was he?

A. No, he didn't seem to be so old. I imagine he was a man around 47.

Q. Did he cause any trouble with the men, or quarrel with the men, or anything?

A. No, not that I know of. He stayed and paid attention to his work.

Q. Well, you would not call him an A-1 mechanic, would you?

A. No, I would not.

Q. Was he pretty efficient about what work he did know how to do?

A. No, he was not.

Q. So generally he was a pretty poor class worker. He had had a lot of trouble with his family, you say?

A. Yes.

Q. And he would not show up?

A. That's right.

2577 Q. And you finally fired him, is that right?

A. That is right.

Q. I suppose you reported from time to time to the plant superintendent that he was not a good workman and ought to be let go, is that right?

A. Well, I have, yes.

Q. He was there, I guess, when you came there, was he?

A. He was.

Q. Do you know how long he had been there?

A. No, sir.

Q. Did you tell Mr. Anselm you were going to let him go?

A. No, I think I just went ahead and let him go. Mr. Anselm gave me understanding there that I was running that department and what I did was up to me.

Q. That is all.

Redirect Examination.

Q. (By Mr. Keele.) In other words, that man's work was not good and when you got ready to fire him, you fired him?

A. That's right.

Q. That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) I think you testified that Du Bois did not stay at his machine. Did Johnstone stay at his machine?

A. He did pretty good.

2578 Q. That is all.

Recross Examination.

Q. (By Mr. Walsh.) You didn't see him wandering through the plant looking things over, did you?

A. No, sir.

Q. That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: We will adjourn now until 1:45 p. m.

(Whereupon at 12:15 p. m., a recess was taken until 1:45 o'clock p. m.)

After Recess.

(The hearing was resumed at 1:45 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: The hearing will be reconvened.

Mr. Keele: I will call Mr. Lawrence Bristol.

LAWRENCE BRISTOL, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Keele.) State your name.

A. Lawrence Bristol.

Q. Where do you live, Mr. Bristol?

A. Wadsworth, Illinois.

Q. You are employed by the Fansteel Metalurgical 2579 Corporation?

A. Yes.

Q. How long have you been employed by that company?

A. I have been there since the 10th of November, 1937.

Q. Are you an officer of the Rare Metal Workers of America?

A. Yes.

Q. What office do you hold?

A. Treasurer.

Q. When were you elected?

A. I don't know the exact date but it was in May, around the first of the month or so; between the 1st and the 10th, I would say.

Q. Do you have charge of the funds of the union?

A. Yes.

Q. You have sole charge of those funds?
A. Yes.
Q. Will you state whether or not the union has any funds at the present time?
A. Yes, they have.
Q. What has been the source of those funds?
A. I don't know what you mean.
Q. Where have they come from?
A. From the members of the union.
Q. What?
A. From the members of the union for dues.
2580 Q. Has that been your sole or only source of funds?
A. Yes.
Q. Has the company or anyone in connection with the management of the company donated or given any money to the union?
A. No.
Q. Has it given it any help at any time?
A. No.
Q. Has it interfered in any way or influenced or attempted to interfere or control of the union?
Mr. Walsh: I object to the question on the ground it calls for a conclusion.
A. No.
Trial Examiner Dudley: I will let it in for such bearing as it may have.
Q. (By Mr. Keele.) There were some halls hired by the union for meeting places, weren't there?
A. Yes, sir.
Q. What?
A. Yes.
Q. What halls were they?
A. Holy Family Hall at Lincoln Street, North Chicago.
Q. Did the union pay for the use of those halls?
A. Yes, sir.
Q. How did they pay for the use of those halls?
A. By check.
2581 Q. Have you the cancelled checks with you?
A. Yes, sir.
Q. Will you produce them.
A. Yes. (Producing documents.)
Q. I show you respondent's exhibit 36 and ask you what that is?

A. This is a check for the meeting at Holy Family Hall on May 21st.
Q. In the sum of how much?
A. $10.
Q. Payable to the Holy Family Church?
A. Right.
Q. And it is signed by you as treasurer?
A. Yes.
Q. Drawn on the First National Bank of Waukegan, dated May 21st, 1937, is that correct?
A. Yes.
Q. I show you respondent's exhibit 38 and ask you to state what that is?
A. This is one made out to Bert Holt in charge of the North Chicago Auditorium.
Q. In the sum of what?
A. $3.
Q. And that is dated June 1st and drawn on the First National Bank of Waukegan?
2582 A. Yes.
Q. What is that in payment of?
A. For the use of the hall on June 1st.
Q. I show you respondent's exhibit 37 and ask you what that is?
A. This is a check to the National Office Supply Company for our state seal.
Q. And that is dated June 1st?
A. Yes.
Q. In the sum of how much?
A. $3.60.
Q. And is signed by you as treasurer?
A. That is right.
Mr. Keele: I move the admission of those documents in evidence.
Mr. Walsh: There is no objection.
Trial Examiner Dudley: They may be admitted.
(The documents referred to were marked RESPONDENT'S EXHIBITS 36, 37 and 38, Witness Bristol, and received in evidence.)
Mr. Keele: We ask leave, Mr. Examiner, to withdraw them and substitute photostatic copies in their place.
Trial Examiner Dudley: Leave is granted.
Mr. Keele: That is all.

Cross-Examination.

2583 Q. (By Mr. Walsh.) Did you bring all the checks of the organization?

A. Yes.

Q. Do you have any other checks that you haven't exhibited here?

A. I have one.

Q. To whom is that drawn?

A. Well, I was sick one day and so I sent another fellow out to get our union books for the treasurer's office and secretary and he paid for them out of his own money and I—

Q. You reimbursed him?

A. Yes.

Q. I presume these expenditures were made in pursuance of the by-laws of the lodge, were they?

A. Yes.

Q. And the money was appropriated by the membership, that is, the bills were submitted to the meeting and meeting authorized the treasurer to pay them, is that right?

A. Yes.

Q. You have proper authority I suppose to do that; you had proper authority at that time, did you? Your books indicate those bills had been voted on, is that right?

A. Yes. You see we have three trustees that O. K. those things.

2584 Q. This money you show as paid out here in these four checks—two for a hall rental and one for certain record books that were necessary for the business of the lodge, and this other check you haven't shown us but it is reimbursement to one of the members of the lodge—

A. Yes.

Q. Are those all the checks that the lodge has drawn?

A. That is all up to the present time.

Q. That is all you have written, is it?

A. Yes, it is all we have up to our last meeting.

Q. Those are all the expenditures that have been approved by the lodge?

A. That is all that checks have been written on.

Q. Oh, I see. Have other expenditures been approved with funds not yet paid?

A. No, it was all paid but we paid it in cash.

Q. And you are the treasurer of the organization?

A. Yes.
Q. And you know what those payments are, do you not?
A. Yes.
Q. Well, can you tell me what the payments were?
A. Yes; $10 to the State for our State charter.
Q. $10 to the State for your State Charter?
A. Yes.
Q. What other payments have you made?
2585 I will have to look at the books to see whether there are any small ones or not. Yes (after examining the book) we had $3.50 paid out for our union cards.
Q. The printing of the cards?
A. Yes.
Q. Then the $10 and $3.50 represents all the other payments that have been paid from the funds of the union, is that right?
A. Yes.
Q. Now, to whom was the $10 paid?
A. Well, that was paid before I took the office of treasurer. They had a temporary treasurer.
Q. Who paid that, do you know?
A. Mr. Johnson.
Q. Mr. Johnson paid that?
A. Yes, sir.
Q. Did the union have funds with which to pay that at the time he made the disbursement?
A. Yes.
Q. The organization has those funds, is that right?
A. Yes.
Q. Now, did you have any expenses in connection with the election of officers?
A. No, none whatever.
Q. Did you make any payment to anybody for printing of ballots?
2586 A. No.
Q. Do you know whether the ballots upon which your name appeared as a candidate for treasurere were printed?
A. Yes, they were printed. Mr. Johnson and Mr. Sylvan took care of that.
Q. And did they ever make any claim against the association for reimbursement for the printing bill?
A. No, I think they did it themselves.
Q. They did that themselves, is that right?

A. I think so. I am not sure, but they were in charge at the time.

Q. Did they ever make any claim against the association for reimbursement for the printing bill?

A. No, I think they did it themselves.

Q. They did that themselves, is that right?

A. I think so. I am not sure, but they were in charge at the time.

Q. At least there is no evidence in the records of the union that they ever charged it against the Rare Metal Workers Union, is that right?

A. That is right.

Q. You have only had two meetings, I take it, outside of the building No. 14; one at the Holy Family Church and one at the North Chicago Auditorium?

A. That is right.

2587 Q. Now, I take it your counsel has not submitted his bill for the work that he did in obtaining your charter?

A. No.

Q. And helped you with the by-laws.

A. No.

Q. Did you help on the by-laws Committee?

A. No.

Q. Did you ever hear where Mr. Johnson or Mr. Berquist has those by-laws printed?

A. No, I never did.

Q. Are you sure those by-laws were not mimeographed?

A. I couldn't tell you.

Q. You know the difference, don't you, between printing and mimeographing?

A. I don't, no.

Q. Well, let's see here; do you remember what color ink was used on them?

A. It looked like carbon paper.

Q. It looked like carbon paper, did it?

A. Yes.

2588 Q. It looked like carbon paper, did it?

A. Yes.

Q. I will hand you what has been marked Board's Exhibit No. 33 and I will ask you whether the printing on the ballots looked like the printing on that paper?

A. I think it looked something like that, anyhow. As far as I can remember, it did. That was quite a while ago.

Q. Was the ink blue so it looked like blue carbon paper?

A. I don't know, but I think it looked like that.
Q. You think it looked like that?
A. I think so, yes.
Q. That is all.
Mr. Keele: That is all.
Q. (By Mr. Walsh.) Oh, pardon me. Just one or two more questions. Who asked you to come here today?
A. Who asked me?
Q. Yes.
A. Mr. Schulz.
Q. And Mr. Schulz is the secretary of Mr. Anselm?
A. I don't know. I guess so.
Mr. Swiren: I think Mr. Walsh may have heard, Mr. Examiner, that we haven't received any subpoenas yet.
Mr. Walsh: That is all.
(Witness excused.)

ROBERT J. AITCHISON, recalled as a witness for the
2589 respondent, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Keele.) You testified before, Mr. Aitchison?
A. Yes, sir.
Q. Has the company, or have you, as an officer of the company, given any financial or other support to the Rare Metals Union?
A. No, sir.
Q. Has it attempted in any way to influence, control, dominate or interfere with the organization?
Mr. Walsh: I object to that question as calling for a conclusion.
Mr. Keele: Yes, that is what the statute states. It defines it in that way.
Trial Examiner Dudley: I will admit.
A. No, it is not.
Mr. Keele: That is all.
Mr. Walsh: That is all.
(Witness excused.)

A. J. ANSELM, recalled as a witness for the respondent, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Keele.) Mr. Anselm, you testified in this hearing before, have you?

2590 A. I did.

Q. To your knowledge has the company, or have you given any financial support or other kind of support to the Rare Metals Workers Union?

A. We furnished no support, financial or otherwise.

Q. Has the company or anyone connected with the management, as far as you know, attempted to interfere with, dominate, influence or control in any way the formation of that union?

A. Not that I know of.

Q. Have you attempted to in any way, as an employee of the company?

A. No.

Q. Has the company, to your knowledge, attempted to influence its activities, or control its activities?

A. Not to my knowledge.

Q. And did the company sponsor it?

A. They did not.

Q. Have you or anyone connected with the management, that you know of, threatened anyone with loss of jobs if they refused to join the Rare Metals Workers Union?

A. Not that I know of.

Q. Has the company, or have you, as plant superintendent, attempted in any way to put pressure in any form on anyone to join or refrain from joining that union?

A. Not to my knowledge.

2591 Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Anselm, I believe you and I discussed this question the other day, and you told me, I think, at that time that you gave permission to post notices on the bulletin boards; you also gave them permission to use building No. 14; you also told them they might ask the mimeograph girl if she would run off their notices and ballots. You do

not by your answers to the questions here today imply that your testimony was wrong the other day; you do not want to change your testimony, do you?

A. No, I do not want to change it.

Q. So the questions you were asked by Mr. Keele, you answered them, having in mind the testimony you gave the other day, is that right?

A. If those questions were asked again I would not change the answers.

Q. Well, the manner in which the questions were asked gives apparently erroneous answers, is that right?

Mr. Swiren: I object to that. That is not true at all.

Mr. Walsh: Well, it would appear that the questions asked by Mr. Keele today would give different answers than the ones that were given the other day.

Mr. Keele: Oh, not at all.

Mr. Walsh: Well, I will withdraw that statement.

2592 I do not want to get into any discussion.

Q. (By Mr. Walsh.) At least, you do not want to change the testimony today in any way from the testimony you gave the other day.

A. Not a bit.

Mr. Walsh: That is all.

Mr. Keele: That is all.

(Witness excused.)

Mr. Swiren: Mr. Examiner, I asked the reporter this morning to mark these photographs Respondent's Exhibits Nos. 10, 11 and 12 respectively, and we have withdrawn the originals and with the permission of the Examiner we will substitute copies. I just want the record to show that those are substitutes, that they are admitted in place of the originals. Is that all right?

Trial Examiner Dudley: I said the other day that they would be admitted, I think.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 10, 11 and 12, Witness Anselm.)

Mr. Keele: Mr. Examiner, at this time we offer certain statutes of the State of Illinois which were in force on February 17th, 1937 and prior thereto and are still in force. There are two sections, particularly, that we are interested in in presenting this offer. One is known as Section 376 of

2593 the Criminal Code of the State of Illinois. It is referred to as the Intimidation Section. The other is called by

some books Section 46, but in the book I have before me it is referred to as Section 139, and it is entitled, "Conspiracy to do Illegal Acts." We are not certain whether the Examiner or the Board will take judicial notice of the laws of the State of Illinois, the statutes, or whether it will not, and in order to avoid any misunderstanding about it we would like to have this identified and admitted in evidence. We have the book here, the printed book which contains those statutes and we have typed copies of the two sections in question and would like to introduce those and give Mr. Walsh an opportunity to compare them with the statutes themselves if he desires to. Both sections were in force on February 17th, 1937 and were in force for many years prior thereto and have been continuously in force since. It is the regular Conspiracy Section in the statutes of the State of Illinois commonly known among lawyers. So is the Intimidation statute which has been in force since 1874 continuously.

Now, the only question is that of procedure. We are not certain in our minds whether the Board will take judicial notice of the statutes of the State of Illinois, or whether it will not, but in order to avoid any discussion about it or any argument we are offering it, if there is no objection to the form in which we are offering it.

2594 Trial Examiner Dudley: I think you will be safe in believing the Board will take judicial notice of it, but at the same time they may be admitted as evidence to be sure that the Board takes actual notice of it.

Mr. Keele: Well, if they have a copy of the statutes before them it will save the Board looking them up.

Trial Examiner Dudley: They will be admitted in evidence as being convenient. I assume the typing is accurate.

Mr. Keele: We now offer Respondent's Exhibits Nos. 39 and 40 in evidence, being the two sections of the statutes I have discussed here.

Mr. Walsh: I make no objection to the form and manner in which the exhibits are offered, but I do object to their being received in evidence on the ground they are incompetent, irrelevant and immaterial to the issues before this Board.

Mr. Swiren: May I ask, Mr. Walsh, if you are questioning the accuracy of the copies of the laws, as we have copied them, or if you are questioning whether they were in force at the time or not?

Mr. Walsh: No, if you say they were in force at the time

or are in force now I will waive any objection to that, and if you say they were copied accurately I will take your word for it.

Trial Examiner Dudley: They may be received in evidence as Respondent's Exhibits Nos. 39 and 40.

2595 (The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 39 and 40.)

Trial Examiner Dudley: Just off the record for a minute, Mr. Reporter.

(Discussion outside the record.)

A. J. ANSELM, recalled as a witness for the respondent, being previously duly sworn, testified further as follows:

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Anselm, you have been sworn and you have testified before, have you not?

A. I have.

Q. The previous testimony is that the company recovered its buildings on February 26th, 1937, and Mr. Aitchison testified that on March 12th, 1937 the company's plants were fully manned and were in operation. I wonder if you will state for me the progress that was made in opening up your plants. What was your condition of employment and operations on March 1st and along at various times to March 12th, so that I can get the picture of the speed with which you picked up operations?

A. I would say no production on March 1st with the exception of the heading machines.

Q. About how many employees do you think you had working on March 1st?

2596 A. Oh, possibly on the clean-up squad and on this one item I just mentioned, possibly 35 or 40.

Q. How many do you think you had on March 3rd, that is two days later. It was on March 3rd you had a lot of checks given out to employees, I remember, and passes taken up.

Mr. Aitchison: The 5th was pay day instead of the 3rd.

The Witness: Pay day was on the 5th.

Q. (By Trial Examiner Dudley.) No pay was given out on the 3rd.

A. There was pay due on the 20th of February that could have been collected on the 2nd or 3rd, or 1st, for that matter. The regular pay for the first half of February would have been on the 20th and the three days, the 15th, 16th and 17th would have been due on March 5th. I think we were talking about March 3rd when we were talking about the pay days.

Q. Well, there were a number of men who had been in the strike who testified they got paid on March 3rd. That is what I had in mind. That is true, isn't it?

A. Yes. I would not say there was much change between the 1st and the 3rd.

Q. All right. When was the next change?

A. I think there was operations in the wire department on the 4th.

Q. March 4th.

A. Yes.

2597 Q. Do you remember about the number of employees that were working then?

A. No, I wouldn't know that.

Q. About how many men were there working in the wire department?

A. Oh, I don't know that. I would say by the 8th we had our glass in the buildings and the buildings were in pretty good shape again. We were moving along in production at the rate of 40 to 50 per cent of normal.

Q. (By Mr. Walsh.) May I inquire at this point, Mr. Examiner; was that all in departments?

A. I wouldn't say that, no. I wouldn't say we were uniformly in production in all departments.

Q. I just wondered, I just wanted to know if it was 40 or 50 per cent of the departments going, or 40 or 50 per cent production in all departments.

Q. (By Trial Examiner Dudley.) You mean 40 per cent or 50 per cent of your total?

A. Yes.

Q. About how many people do you think you had to work then?

A. I wouldn't know, Mr. Examiner.

Q. You had more than 40, I suppose.

A. Oh, yes.

Q. Did you have a hundred?

A. Pretty close to it. I think we had better slide

2598 along until the 12th.

Q. No perceptible change between the 8th and 12th?

A. Oh, yes, a decided change between the 8th and 12th.
Q. A steady increase?
A. Yes.
Q. On the 12th, what was the condition?
A. Well, almost normal. We lacked a few here and there, but not many.
Mr. Aitchison: Of course, your laboratory workers and clerical workers and all that stuff, that would make a difference. They came in on the 27th.
Q. (By Trial Examiner Dudley.) They didn't come in before the 27th?
A. No. I am not giving you figures on those. I don't have them in my mind.
Q. There was some testimony here about a newspaper clipping and I believe a notice that you sent out on a certain date, or, rather, giving a certain date on which employees could return to work and get their back pay.
A. No, sir.
Mr. Swiren: I do not think there was any testimony about a notice. There was a notice to employees working.
Q. (By Trial Examiner Dudley.) Did you send out any notice?
A. (No answer.)
Mr. Swiren: Answer that, will you, so the record will show that?
2599 A. No, I didn't.
Q. (By Trial Examiner Dudley.) You sent that notice only to people who were already working?
A. Yes.
Q. Notice to them about pay checks that included the back pay?
A. It was a pay check that was just the back pay. It was covered for that purpose.
Q. My point is that you told people if they came back to work by a certain day you would pay them their back pay and yet you didn't tell them that until they already came to work?
A. I suppose we wanted to reimburse those that came back to work as well as those that came back to work up to the 12th.
Q. Well, did you or did you not give people who were not at work a chance to return to work by the 12th, if they wished to, and even get back pay?

A. We didn't send out that notice. We didn't send that out.

Q. And did you pass the word around by word of mouth?

A. I believe that letter covered it all.

Q. You saw on the cross-examination of a number of girls that Mr. Keele and Mr. Swiren brought out the fact that the notice apparently was an invitation to those people who
2600 read it to return to work.

A. I imagine the girls could so construe that notice but it was not a notice in the newspaper.

Q. Well now, you are stating that the notice itself was merely a letter attached to checks that were given to people who were already at work?

A. That is correct.

Q. And that means, then, that you didn't notify people by a notice which you mailed or by a newspaper notice telling them if they would return to work before the 12th you would give them their back pay?

A. No, we didn't.

Trial Examiner Dudley: That is all.

Mr. Walsh: I have no questions.

(Witness excused.)

Trial Examiner Dudley: We will take a short recess.

(A short recess was taken.)

Mr. Swiren: Mr. Trial Examiner, there was an inquiry made by the Examiner of Mr. Anselm regarding the notice published in the Waukegan News Sun under date of March 10th appearing as Board's Exhibit No. 34, and in view of that fact, in view of the fact that that was handled by Mr. Aitchison I have called him back to take the stand.

ROBERT J. AITCHISON, recalled as a witness for the respondent, being previously duly sworn, testified further as follows:

2601 *Direct Examination.*

Q. (By Mr. Swiren.) That notice was prepared by you, wasn't it?

A. Yes, sir.

Q. And that was distributed to all employees in the plant?

A. Yes.

Q. There was no general mailing?

A. No.

Q. Did you give it to anyone else to make publicity of it?

A. I gave it to the publisher of the Waukegan Sun to use as general information, to use as he liked.

Q. Well, what was the statement as to the pay?

A. Those that were reinstated would be entitled to it by March 12th. We had to break it off at some place. As a matter of fact, it started with the Vascoloy-Ramet group who were prevented from making a day's pay by no act of their own. And the next feature is when the people in the Fansteel Company are also prevented from working by no reason of their own and somebody takes the plant away from them and penalizes them and you have to draw the line some place, or you would have to be paying out for the rest of your natural life.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Aitchison, the entire notice was not printed in the newspaper, was it?

2602 A. No, sir.

Q. The entire notice was distributed to the people in the plant.

A. No.

Q. As far as you know, the entire notice as such was never given out to the people in the plant, is that right?

A. Yes, sir.

Q. Do you know what the rest of the notice said besides what is in the newspaper as given in Board's Exhibit No. 34?

A. Yes. I think it started off by saying that because of the violent seizure of the plant and the removal of the company's control of its own property a number of employees have been unable to earn their wages and do their work through no fault of their own and by reason of that all employees who had been reinstated by March 12th would be paid.

Q. Did it say anything about giving preference to the people who were in or not in the strike?

A. No.

Q. Or who were or were not members of labor unions?

A. No.

Q. Have you made from January 1st, 1937 to the present time any statements in public to the effect that you would or would not recognize an outside labor union at your plant?

Mr. Swiren: Just a minute. I think we had that same problem up this morning and I want to make my objec-
2603 tion and make clear my position.

We tried to examine a large number of witnesses from time to time on cross-examination, the Board's witnesses. Each time that either counsel or the Examiner thought that it was not correctly related to the phase under consideration, I was advised I could not ask the questions. We then made an agreement on that and applied the same agreement to our case and I think we should be permitted to proceed in the same orderly way, taking up one phase at a time and finishing it.

Trial Examiner Dudley: Well, while we are on the question of notice I think you can bring it out, Mr. Swiren.

Q. (By Trial Examiner Dudley.) Did you ever make any statements to the public about the policy of the plant or the policy of yourself being for or against the recognition of outside labor unions?

A. After they seized the plant and walked in there and we filed an injunction notice I said I would not talk to anybody. We want our plant back and we are going to get it back. I made that statement while the plant was out of our possession.

Q. You said then you would not talk to anybody?

A. That is right. We want our plant back and the laws enforced and the injunction order carried out. That is not a subject of discussion with anybody.

Q. You said you had talked to employees of the plant.

A. Yes. They had possession of it. Why shouldn't
2604 we talk to them.

Q. Yes. But, you would not talk to people who did not work for the plant, regardless of whether they were representatives or pretended to be representatives of your employees or not.

A. During the time the plant was out of our possession I think I made that statement.

Q. After February 26th did you make any more statements?

A. There was no occasion to. We had our plant back and we started to work it.

Q. Did you make any statement to that effect to newspaper reporters?

A. I think I tried my best to get the heat off the place

once I got the plant back. Newspaper releases were stopped the moment we got possession of the plant. Of course, there was a lot of gossip. They buttonholed you on every corner and would ring up every day.

Q. Did the newspapers give considerable local publicity here to your statement that you would not talk with outside representatives?

A. I suppose some, yes.

Q. Frequently?

A. I think a check of the papers will show that they mentioned it all right.

Q. Have you made any speeches to clubs, Kiwanis clubs or Rotary clubs or anything like that regarding this matter?

2605 A. No.

Q. That is all.

Mr. Walsh: May I ask a question, Mr. Examiner?

Trial Examiner Dudley: Certainly, go ahead.

Q. (By Mr. Walsh.) I have a clipping from what appears to be the Waukegan paper in which you are quoted as follows, and I just wondered if you were accurately quoted at the time, and I will read the portion which pertains to this part of the inquiry, quoting from the paper as follows:

"The management will continue its policy of dealing directly with its own employees, either individually or collectively, and will not permit outside professional agitators to inject themselves between us and our employees."

A. What date is that?

Q. Unfortunately, it has no date on it. I was wondering if you were correctly quoted.

Mr. Swiren: We want to renew the objection that was made when the Examiner opened up this phase in the middle of our case. We make the same objection now and an additional objection on the ground that we do not know where the quotation is coming from. Unless he wants to identify that I do not think the witness ought to be called upon to answer.

Trial Examiner Dudley: The objection will be noted. Mr. Aitchison just told me that in general he made statements like this.

2606 A. Well, the plant was out of our possession.

Q. (By Mr. Walsh.) Well, I believe this must be shortly after the return of the property to you.

A. Well, I will say no.
Q. That you are not correctly quoted.
A. No.
Q. I will read the other part of the article. It is headed:
"Praise Sheriff for Strike Act.
"Fansteel Company thanks all officials; report material loss of $25,000.
"President Robert J. Aitchison of the Fansteel Metallurgical Corporation today issued the following statement concerning the ouster of the discharged employees from the company property:
"In conformity with the orders of the Circuit Court of Lake County, Sheriff Lawrence A. Doolittle with 40 deputies today removed 60 discharged employees from plants 3 and 5 which were restored to the company. We are grateful that the sheriff's action was so ably planned and carefully carried out that no serious injury to anyone resulted.
"From a preliminary inspection and survey of plants 3 and 5, we have arrived at the tentative conclusion that:
"(1) There has been no major injury to the machinery itself.
"(2) Materials, parts and supplies of an approxi-
2607 mate value of $25,000 have been destroyed or otherwise rendered useless.
"(3) Physical injury to the buildings themselves, including broken window panes, has resulted in damage of approximately $7,500.
"It is the definite intention of the company to reopen the plant and resume operations as soon as possible after the necessary rehabilitation can be effected. Building repairs and steps toward replacement of destroyed parts, material and supplies will be undertaken promptly and will be speedily consummated. We are notifying our employees to this effect and will advise them shortly of the date operations will be resumed.
"All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the 80 men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for reemployment from such men will receive favorable consideration.
"We cannot condone the defiance of the courts of the re-

sistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant.

"The management will continue its policy of dealing directly with its own employees, either individually or
2608 collectively, and will not permit outside professional agitators to inject themselves between us and our employees."

Was that a statement issued by you after the return of the property?

A. I don't think we issued that, did we, Max?

Mr. Swiren: I think that was a combination of a statement issued after the men came out with a statement issued before they came out. I think we can concede that the statements quoted there were made. I think they were consolidated. That paper comes out in the afternoon and what they frequently do is to consolidate what happens in the morning with what happens the day before and I expect that is a paper that came out on the 26th of February and combined a statement issued on the 25th with the one on the 26th.

Mr. Walsh: No, it would have to be on the 26th or thereafter, Mr. Swiren, because it all relates to the return of the building by the sheriff, don't you see?

Mr. Swiren: Well, that may be, I don't know. The most of it, I know, was a part of our statements.

Mr. Keele: Well, do you want to prove who made those statements?

Mr. Walsh: I just want to know who made it.

Mr. Keele: Well, we will admit it.

Mr. Walsh: All right. I would like to introduce that clipping in evidence.

2609 Mr. Swiren: I think that is a consolidation. In the first place, it is too long to be put into one paper. You do not have news releases that long.

Mr. Walsh: I will offer this in evidence as BOARD'S EXHIBIT NO. 38.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 38.)

Mr. Swiren: The Examiner asked that we obtain some information with respect to the number of women employees. There is a schedule in evidence showing the total number of employees divided by production and the like, and in the production department the women numbered the following on the following dates:

September 10th, 1936, 45.
September 21st, 1936, 47.
February 17th, 1937, 52.
June 1st, 1937, 86.

That does not include office employees. This is production employees, and just women.

Trial Examiner Dudley: Thank you very much, Mr. Swiren.

(Witness excused.)

WILLIAM E. SCHULZ, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Swiren.) Will you state your name?

2610 A. William E. Schulz.

Q. You are an employee of the Fansteel Metallurgical Corporation?

A. Yes, sir.

Q. In what capacity?

A. Secretary to the plant superintendent and also in charge of production.

Q. In pursuance of your duties you keep the employment records of the employees of the company, do you?

A. Yes, sir.

Q. I am showing you photostatic copies of the application cards of the Amalgamated Association of Iron, Steel and Tin Workers of North America admitted in evidence as Board's Exhibits Nos. 18, 19 and 20. Did you examine those?

A. I did.

Q. Did you check those against your present employment records?

A. Yes, sir.

Q. And your former employment records?

A. I did.

Q. I show you Respondent's Exhibit No. 41, and ask you whether you prepared that?

A. I did.

Q. And that shows the persons named in those membeship cards who are no longer employed by the company, the

2611 reason of their not being so employed, and the dates of severance of the employment, is that right?

A. That is right.
Q. And those are accurate?
A. They are.
Mr. Swiren: I offer RESPONDENT'S EXHIBIT NO. 41 in evidence. Is there any objection, Mr. Walsh?
Mr. Walsh: No, I think not.
Trial Examiner Dudley: It may be received in evidence as RESPONDENT'S EXHIBIT NO. 41.
(The document referred to was received in evidence and marked RESPONDENT'S EXHIBIT NO. 41, WITNESS SCHULZ.)
Q. (By Mr. Swiren.) Did you compare the cards forming Board's Exhibits Nos. 18, 19 and 20 with the present membership roll?
A. I did.
Q. Are there any of the women or men whose names appear on those cards who are now employed by the company?
A. Yes.
Q. How many?
A. 61.
Q. Now working for the company?
A. Now working for the company.
Mr. Swiren: That is all.

2612 *Cross-Examination.*

Q. (By Mr. Walsh.) Mr. Schulz, would you know the reason why these people listed in Respondent's Exhibit No. 41 were discharged?
A. The reason for it?
Q. Yes. LaVerne Salo I notice was discharged on the 17th of March, 1937.
A. LaVerne Salo is very slow in our operations.
Q. He did not fit into the reorganization, is that it?
A. No.
Mr. Swiren: Just a minute, we object to this, unless this witness had something to do with the discharge and has any authority or any direct information.
Mr. Walsh: Well, I asked him if he knew and he is trying to tell me.
Mr. Swiren: Well, I am talking about having charge of the activity, not hearsay or guessing about it.
Trial Examiner Dudley: Well, he has testified that the reasons for the discharge given here are accurate.

Mr. Swiren: The reasons for being off the list.

Trial Examiner Dudley: They are accurate.

Mr. Swiren: Yes, there is no question about that. If this witness has anything to do with it, though, so he is in position to testify, I have no objection.

Trial Examiner Dudley: I presume he knows that
2613 the list is accurate. You can give what information you have.

A. Well, in efficiency, she was very slow.

Q. (By Mr. Walsh.) She came back after the trouble and worked until the 17th?

A. Yes. She went back on her old job where she was slow. The foreman didn't want to take her back so we put her back to work anyway and told them to give her another chance. She worked about another week and then we transferred her to Mary Atkinson, in the other department, and she was so slow that Mary Atkinson let her out.

Q. I notice that three people here, that is, LaVerne Salo, Victor Oliver, and Russell Pester are people who returned after the plant reopened, but since that they left voluntarily or were discharged. I notice here the third name on the list, Alfred Johnstone; do you know why he was discharged?

A. No.

Mr. Walsh: That is all.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Schulz, does this list just give the people whose connections were severed before February 17th, 1937?

A. No, some of them were after. Some of them left after and some before. This is a list of employees.

Q. Well, this list does not then give the names of the people who were discharged on February 17th, does it?
2614 A. No.

Q. Well, who does it leave out?

This will be off the record, Mr. Reporter.

(Discussion outside the record.)

Q. (By Mr. Swiren.) You did not try to include in this list the men who were discharged on the evening of the 17th for sitting down in the plant, did you?

A. No.

Q. Did you ever have a complete list of those people compiled in your office?

A. No.

Q. This is independent and in addition to any of those that we discharged for participating in the seizure of the plant on the evening of the 17th, is that right?

A. Yes.

Q. (By Trial Examiner Dudley.) Does this list include the people that were employed as of February 17th and who are not employed now?

A. Employed as of February 17th?

Q. Yes.

A. And are not now employed?

Q. That is right.

A. No, some of these left in November and December.

Q. Well, what I am interested in knowing is your standard in determining whom you should include and whom you
2615 should exclude as of the groups that were not rehired after the strike?

A. I had these cards to make this list up and I went through all the cards to find out how many of them were discharged, laid off and voluntarily left the company from the time they signed the cards until the present date.

Q. Well, how about the 90 to 100 people that worked for the company on February 17th, 1937 and do not work for the company now that were members of the union, for whom, I suppose, there are cards?

A. That was not made of record. We made no record on that.

Q. Well, do you consider them as having been discharged or laid off or left of their own accord?

A. (No answer.)

Q. They are not employees of the company now, are they?

A. Yes.

Q. I am referring to the people who are not working there.

A. They are employees now.

Q. Well, how did they manage to lose their connections with the company?

A. How did they manage to lose their connections with the company?

Q. Take John Kondrath, for instance. He was employed by the company on February 17th, wasn't he?

A. Yes.

Q. Is there a card for him?

2616 A. Yes.

Q. Why isn't he listed here?

Mr. Block: Do you mind if I interrupt?

Trial Examiner Dudley: No.

Mr. Block: Well now, the question you are asking, I don't think that question should be asked of this witness. As I recall it, that is covered by the stipulation. You have a list of the names and what happened to their employment and when and under what circumstances they left and all that would be disclosed by that stipulation. Now, the question I think you are asking; you want to know what happened to the men who are not now in the employ of the company who were involved in the seizure of the plants, and that is covered by the stipulation.

Trial Examiner Dudley: This is a list of the employees laid off, discharged or who left the company of their own accord. I cannot conceive of any other reason for people leaving the company.

Mr. Swiren: That is other than the people listed in the stipulation.

Trial Examiner Dudley: All right.

Mr. Block: This covers up to June 4th, 1937.

Trial Examiner Dudley: Well, then is it understood this list is complete except for the people named in the stipulation?

2617 A. Yes.

Mr. Swiren: Why don't you add that in pen and ink on the caption and then it will be clear.

Trial Examiner Dudley: This is off the record.

(Discussion outside the record.)

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Schulz, did you examine the cards to determine how many members of Lodge 66 were not in the company's employ at the present time as the result of the strike or other activities or were not recalled after the company resumed operations?

A. I didn't get the question.

Q. Well, let me state it in this way: maybe that is a little involved, but I think we understand each other. How many members of Lodge 66 listed in those cards are not now working for the company?

A. How many are not now working for the company?

Q. Yes.

A. I believe it was about 104.

Q. 104?
A. Yes.
Q. Now, did that 104 not now working for the company include any persons listed in Respondent's Exhibit 41?
A. No, it didn't include any of them. That is part of the 104.
2618 Q. But that does include these people.
A. Yes.
Q. The 104 includes the persons listed in Respondent's Exhibit 41?
A. Yes.
Q. Now, there were 61 persons named in the cards who are now working for the company.
A. Yes, sir.
Q. And that includes no person listed in Respondent's Exhibit 41?
A. No.
Q. Now, in checking those cards did you find that at some time between September 10th and February 17th all of the persons listed by those cards were employed by the Fansteel Metallurgical Corporation?
A. Between September 10th and February 17th?
Q. That is right.
A. I believe they were.
Q. That is all.
(Witness excused.)
Mr. Swiren: At the outset of the hearings, Mr. Examiner, we offered Respondent's Exhibit 1 and Respondent's Exhibit 2 in evidence in connection with the motion. In order that there may be no question as to their consideration we again offered them in evidence. The Examiner will recall that
2619 those exhibits were the order entered in connection with the contempt proceedings and the decree. We want them received in evidence for the entire purpose of the case and not for the motion only.
Trial Examiner Dudley: Respondent's Exhibits 1 and 2 may be admitted in evidence for general purposes in the entire case.
(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 1 and 2.)
Mr. Walsh: I objected to them at the original time.
Trial Examiner Dudley: Do you have any more witnesses?
(Discussion outside the record.)
Mr. Swiren: If the Examiner please, we are still lacking

the records of Lodge 66 that we asked for in our application for subpoenas and in our renewal. We haven't gotten any subpoenas and so far as I know no records have been produced other than the cards. We still would like to go into that situation.

Trial Examiner Dudley: Mr. Swiren, you will remember you mentioned that on last Saturday or Friday and then again on Monday, and I think it was Monday afternoon that I told you that the stipulation then being discussed would affect considerably what you wanted.

Mr. Swiren: Well, that has nothing to do with this.
2629 That was the question of the sit-down only.

Trial Examiner Dudley: Well, we discussed it on Friday and you wanted everything except that requested in the first paragraph of your stipulation. Now, the stipulation has taken out some of that. Do you remember on Tuesday I asked you to make your motion in writing so I could wire Washington? Will you explain that now?

Mr. Swiren: I will explain it right now. We still want the subpoena duces tecum directed to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, requiring the production of all its minute books, books of account, check books, membership cards, books and lists and all correspondence relating to the solicitation of members among the employees of the respondent, or relating to the participation of said Lodge 66 or any of its officers, members or agents in the seizure on February 17th, 1937 of buildings 3 and 5 of the respondent's plant and the retention thereof, the maintenance of persons in occupancy of said buildings until February 26th, 1937, and so forth.

Trial Examiner Dudley: Does that refer to paragraph 4 of your original application?

Mr. Swiren: Yes.

Trial Examiner Dudley: The entire paragraph 4.

Mr. Swiren: Yes. I might add that we would still like the subpoena for Robert E. Plankington. I don't know
2621 whether he is available now or not. When the request was made originally I knew he was in Chicago.

Trial Examiner Dudley: Who is he?

Mr. Swiren: He is an arbitrator of the United States Department of Labor.

Trial Examiner Dudley: What was the purpose of it?

Mr. Swiren: To prove violence and threatened violence.

Trial Examiner Dudley: Haven't you got that in the record?

Mr. Swiren: No, that is independent of anything that has been produced in the record. It is additional.

Trial Examiner Dudley: You have a stipulation regarding the retention of the buildings.

Mr. Swiren: Well, these are threats of violence on the lives of persons connected with the company.

Trial Examiner Dudley: What is the relevancy of that to the issues here?

Mr. Swiren: Threats of violence as additional grounds for not taking people back. The company receiving threats on the life of its president is not obliged to hire the people making the threats. At least, that is not the customary practice.

Trial Examiner Dudley: Returning to paragraph 4 of the application, point A of that paragraph has been taken care of now, I suppose, by the submission of cards, hasn't it?

2622 Mr. Swiren: Oh, no, I do not think that has been taken care of by such a showing by a bunch of cards. I don't think that satisfies the proof.

Trial Examiner Dudley: What other evidence do you want?

Mr. Swiren: I want the records. I don't know how many of them dropped out. I don't know how many of them were expelled, or anything about them. I don't know how many were accepted. These were all applications for memberships. I want to know how many were accepted.

Trial Examiner Dudley: On Section B, may I ask your advice with reference to that, in paragraph 4?

Mr. Swiren: Yes. I think if the union financed the situation and directed it, then every member of the union is charged with participation and becomes a party to the violation of the law. If they didn't, then it becomes a question of whether they actually participated or not.

Trial Examiner Dudley: What is the relevancy of that?

Mr. Swiren: Well, I think if anybody participated either directly or through the union engaged in illegal activity, then they come under this point.

Trial Examiner Dudley: Haven't you brought out through the cross-examination of the parties their participation or non-participation?

Mr. Swiren: That is direct participation. That does not apply to members of the union who did not actually

2623 bring supplies in or actually engage in the sit-down.

If the union financed and directed those activities—this Association which included those people—then even though

they didn't personally participate, they actually became parties to it.

Trial Examiner Dudley: What people did you have in mind that you would want to raise that objection to?

Mr. Swiren: Well, if that is a fact I think it ought to be shown with respect to all the people named in paragraphs 8 and 11 of the complaint who were not directly connected either by aiding and abetting the sit-down itself or actually participated in the retention of the buildings.

Trial Examiner Dudley: Which people are those?

Mr. Swiren: Well, I don't remember the names of all of them. It may include the women, it may include Hoff and it may include one or two others.

Trial Examiner Dudley: I think on all those people you have got in evidence the facts relating to them, largely through the cross-examination of yourself or Mr. Keele.

Mr. Swiren: No, those people did not participate. The women did, maybe. They may have tried to participate, or they may have been brought in by reason of the organization of which they were a part.

Trial Examiner Dudley: You are claiming the women were discharged by reason of their inefficiency.

Mr. Swiren: Yes. But, we cannot swear to all of 2624 those because we do not know what the record shows.

Trial Examiner Dudley: You have sworn that they were inefficient and that that was the reason for not hiring them back.

Mr. Swiren: That is right. And if there is any other reason for not reinstating them the Board ought to have that reason available before it reconsiders an order directing their reinstatement.

Trial Examiner Dudley: You mean if you had in mind their contribution of funds to the strike, you want to find out whether that is true, to determine whether you did have that in mind on February 26th.

Mr. Swiren: No, I think the Board, before it considers any order, should know first whether there was a proper discharge. Secondly, whether the failure to reinstate was for a proper purpose and third, if neither was for a proper purpose, if a person ought to be reinstated for something that has occurred since then the Board ought to enter an order.

Trial Examiner Dudley: I will send a wire tonight covering the renewal of your motion, but I wish you would reduce your motion to writing and show why the reasons you are asking for these things are relevant to the issues in the case.

Mr. Keele: Instead of arguing our grounds for the renewal of the motion we will state it in writing.

2625 Trial Examiner Dudley: Yes. Just so we can be definite. I suggested at least as long ago as Tuesday that we would like to have that motion in writing.

Mr. Swiren: Well, there was a question about individuals. There was no question at that time as to records. On the records there have never been any questions about us wanting them.

Trial Examiner Dudley: Is there anything else?

Mr. Swiren: No.

Mr. Walsh: Nothing today, Mr. Examiner.

Trial Examiner Dudley: Then we will stand adjourned until nine-thirty o'clock tomorrow morning.

(Thereupon, at 3:45 o'clock p. m., June 23rd, 1937, an adjournment in the above entitled matter was taken until 9:30 o'clock a. m., Thursday, June 24th, 1937.)

2629 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

Room 4, United States Post Office,
Waukegan, Illinois.
Thursday, June 24, 1937.

The above-entitled matter came on for further hearing, at 9:30 o'clock a. m., pursuant to adjournment.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

2630 PROCEEDINGS.

Trial Examiner Dudley: I will call the hearing to order. You may proceed.

Mr. Keele: May we be off the record for a moment, if the Examiner please?

Trial Examiner Dudley: Off the record.

(Discussion outside the record.)

Trial Examiner Dudley: You may proceed.

Mr. Keele: Mr. Anselm.

A. J. ANSELM, recalled as a witness for the respondent, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Keele.) Mr. Anselm, you have been previously sworn, and have testified several times before in this hearing, have you not?

A. Yes, sir.

Q. Were you present when Mr. Earl Fagan testified in this case?

A. I was.

Q. Concerning a conversation with you—at that time he testified concerning a conversation which he stated was held with you in one of the buildings,—in the cutting room, in building 3, at which time as I recall it he stated that you said to him in substance, "Have you seen this contract?" And he said, "Yes." And you said, "Read it over." And

2631 he seated himself on the foreman's desk, Mr. Chiswell, and looked through the contract, and said to you he thought any court would uphold that contract, or words to that effect; and that you said in substance that you wanted "to break this thing up"; that you suggested that he withdraw from membership in the union; and that he pulled out of his pocket, a membership card in Lodge 66.

Do you recall that testimony?

A. I recall that testimony, yes, sir.

Q. Will you state whether or not—or, will you state what you said to Mr. Fagan, and what he said to you, there at that time?

A. I called him over to the desk, and asked him whether he had seen the contract, and asked him about the closed shop and checkoff provisions of the contract.

He stated that he had not read it, but that he knew what was in the contract. I said, "All right, Earl; I just wanted to make sure that you knew what was in the document."

That was the only conversation.

Q. Was anything said at that time about your "wanting to break this thing up"?

A. Not a word.

Q. Was there anything said about the whole matter being forgotten in two years if he withdrew—

A. No.

2632 Q. —or anything to that effect?

A. No, there was not.

Q. Did he show you at that time a membership card in the union?

A. No, sir, he did not. As a matter of fact I have never seen a union membership card in the Steel Union.

Q. Was there any other conversation that you had with Fagan after that, Mr. Anselm?

A. Not with Fagan, no, sir, except that on February the 27th, I believe it was, he asked me and Mr. Swiren if we could not close the saloons in North Chicago.

Q. (By Mr. Walsh.) What was that date?

A. February 27th.

Mr. Swiren: Just a moment.

The Witness: Oh, pardon me. No. It was February the 17th, or 18th.

Mr. Keele: February 17th?

Mr. Walsh: February 17th, was it not?

The Witness: Yes, February 17th or 18th.

Mr. Walsh: I just did not want you to make a mistake.

Q. (By Mr. Keele.) Did you have any conversation that day with Clarence Dreyer?

A. I did.

Q. And was that conversation had at practically the same time and place?

2633 A. It was within a few minutes after I had talked to Fagan.

Q. And did you talk to Ted Daluga there?

A. I did.

Q. All right. Will you just go ahead and tell us what that conversation was.

A. I asked Clarence Dreyer whether he had read the contract over, and he said he had. I asked him about the closed shop and checkoff; and asked him if he knew what it meant. He wasn't sure about that, but he did say, "Al, since you are back around here, it is my idea, and that of some of the rest of the boys in the department, that we don't need a union of any kind, and if we could, we would get out of this, because we know we are going to get a square deal around here from now on."

Q. Who said that?

A. Clarence Dreyer said that to me. Then in the meantime, he called over Ted Daluga, and there was some conversation along those lines.

Q. Do you remember what the conversation with Daluga was?

A. Oh, Ted said that he felt the same way about it; that we didn't need a union around there of any kind.

Q. Did you ask them to get out of the union?

A. No, sir, I certainly did not. I never asked anybody to get out of any union.

Q. Now, was there any conversation there as to how 2634 they could get out of the union?

A. No, sir, there was not.

Q. Now, with reference to the socalled E. R. P., or Employees Representation Plan: Did you circulate yourself, or did you cause to be circulated, any petition with reference to that plan?

A. I did.

Q. What was the nature of that petition—or those petitions?

A. It called for an expression from the employees, if they favored that plan.

Q. As to whether or not they favored the plan?

A. As to whether they favored the plan, yes, sir.

Q. And when were those petitions circulated?

A. About three days after I talked to Fagan and Dreyer, I should say.

Q. You talked with Fagan and Dreyer on September the 10th, I believe.

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. And how do you arrive at a date of three days later, for circulating the petitions?

A. Well—

Q. I mean, how do you fix that date, as the date
2635 when the petitions were circulated?

A. Oh, I know it was after that.

Q. Did you show Fagan or Dreyer a petition on that day, with reference to the Employees Representation Plan?

A. No, sir.

Q. When you had that conversation with them?

A. I did not.

Q. Had the petitions at that time been printed?

A. No, sir.

Q. Or typed?

A. They had not been typed, no, sir.

Q. Now, what was the object of those petitions?

A. Why, the object was to get an expression from the employees as to whether such a plan might be wanted in the factory.

Q. Had you discussed the circulating of that petition, or those petitions, with Mr. Aitchison at the time they were circulated?

A. No, sir, I had not. I did that whole thing on my own responsibility.

Q. What was your purpose in doing it?

A. Well, I wanted to see—I wanted to find out what the boys down in the shop were thinking about.

Q. You had been back two days, at the time of your talk with—

2636 A. Two days.

Q. —Dreyer, Daluga and Fagan?

A. Yes, sir, I had been back two days, and I wanted to see what the sentiment was.

Q. And within the next three days, you started circulating those petitions, is that correct?

A. Within two or three days after the 10th.

Q. Yes. All right. Did you ever discuss the matter—or, first, what was the result of the circulation of those petitions?

A. The result was, they came back to my desk with 125 signatures on.

Q. In favor of the Employees Representation Plan?

A. Yes, sir.

Q. What did you then do?

A. I think took them up to Mr. Aitchison, and told him what I had done, and asked him what we ought to do about it, if anything. He turned to me and he said, "We don't

want to do anything about it. Let them do as they please over in the shop."

Q. Yes?

A. (Continuing.) I then walked out of his office, and dropped the petitions in the nearest waste-basket there.

Q. Was there any further action taken with respect to the Employees Representation Plan, or any other plan, or
2637 any union plan, so far as the company, or the management, was concerned?

A. No, sir, there was not. That was the last that I heard of it.

Q. Did you ever make any statement to Art Holm, Sr., or to anyone else, to the effect that you had been brought back as plant superintendent, to break up the union?

A. I did not.

Q. Were you brought back for that purpose?

A. Why, no.

Q. Was there ever any discussion between you and Mr. Aitchison, or between you and any other official of the company, with respect to your having come back to break up the union?

A. There was not.

Q. Was that ever mentioned?

A. It never was.

Q. What were the reasons that led up to your being brought back as plant superintendent?

A. Why, I had an understanding with Mr. Aitchison, that when the company could afford to put me back on, I would have the job back.

Q. By the way, Mr. Anselm, how long had you been plant superintendent at that plant?

A. Well—

Q. How many years of service prior to September, had you put in there?

2638 A. 14 or 15 years.

Q. That you had been plant superintendent?

A. 14 or 15 years.

Q. Now then, while you were out selling for the company, did you have occasion to look into other plants, and go into other plants, throughout the country?

A. Yes, sir, I have been in a great many plants, but this is one of the best plants in the middle west.

Q. Were you called into any of those plants, in a supervisory or consulting capacity?

A. Yes, sir, I was; I was consulting technical engineer on cutting tools.

Q. Will you state whether or not, when you made those trips to those various plants, you had in mind the improving, or the making of improvements in the Fansteel plant, at the time when you felt you could come back?

A. That matter was running through my mind, yes, sir. Production has been my specialty for all of my life, and when as the result of getting into new plants, I got new ideas, I figured that I could use them, and incorporate them, when I came back.

Q. And you told Mr. Aitchison, on your return from those trips from time to time, did you not, of certain improvements that you would like to see put in there?

A. Yes.

2639 Q. And certain ideas that you had?

A. Yes, sir, I did, and I had a lot more in mind than what our purse would permit the application of.

Q. Did you talk with DuBois on the 10th of September, on the same day you talked with Dreyer, Daluga and Fagan?

A. No, sir. I talked to Frank Moxey. I talked to Moxey because, in point of service, I believe he was one of the oldest men we have, as well as the best in that line.

Q. And what was the conversation that you had with Moxey; what was that about?

A. On the contract.

Q. What was your purpose in talking with Moxey, Daluga, Dreyer and Fagan; or, if you were just talking in a general way, why, tell us.

A. They were old men, and I wanted to get an expression from them.

Q. Why did you want to get an expression from them?

A. Well—

Q. What was your purpose in wanting to get an expression from them?

A. In this particular instance, I wanted to know if they were informed as to what the contract contained.

Q. You are referring now to the contract which was submitted on September 10th; is that correct?

A. Yes, sir.

2640 Q. Do I understand from that, that you had some doubts as to whether or not the rank and file of the men knew what was in the contract?

A. I certainly had a lot of doubt about it at that time, yes, sir.

Q. And it was your endeavor to find out whether or not the men generally knew what was in the contract; is that right?

A. That is exactly what I wanted to find out, yes, sir; and I did not confine my visits, or my conversations to those gentlemen alone.

Q. With whom else did you talk?

A. I talked to Bisbee, Ludlow, Stricklen, and about a dozen more.

Q. Do you recall at this time who any of the others were?

A. Well, let me see. There was Otto Latz; that is all I can recall just a moment.

Q. On the same day?

A. Yes, sir.

Q. In other words, you went from one department to another—

A. I did.

Q. —is that it?

A. Yes, sir.

Q. Now, what did you learn as the result of these conversations that you had?

A. Well, I learned that many men—that many of
3641 the men did not know that there had been a contract submitted, and also, that they did not know what was in it.

Mr. Keele: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) Mr. Anselm, in order that we may get your experience in chronological order in the record, that is, your experience with the Fansteel Company, will you just repeat for us when you first became plant superintendent—or, first, when you first came to work for the company; then when you became plant superintendent; and then when, as I understand it, you went on the road selling for Vascoloy; and then when you returned; just so that we have those dates straight in the record.

A. I became plant superintendent February 1, 1919.

Q. Was that your first connection with the company, Mr. Anselm?

A. That was my first connection with this company, yes, sir.

Q. That is what I mean.

A. Then I continued in that capacity until the spring of 1933.

Mr. Aitchison: June.

The Witness: How?

Mr. Aitchison: June 1933.

The Witness: June 1933.

Mr. Walsh: Yes?

2642 A. (Continuing.) Then I did some selling for Fansteel, for the period of approximately one year.

Mr. Walsh: Was that—

A. (Continuing.) And then I went to Vascoloy for two years.

Mr. Walsh: I see.

A. That brings us up to the fall of 1936, I believe.

Q. (By Mr. Walsh.) Very well. And then you returned to assume your old duties, did you?

A. Yes, sir.

Q. As plant superintendent.

A. Yes, sir, in September of 1936.

Q. Naturally, production having been the major part of your life work, you were interested in that matter particularly when you went from plant to plant, I suppose, were you?

A. Yes, sir, that is true. I had been a production man long before I came to Fansteel.

Q. Now, of course the items which you were selling, were tools to aid production, I believe; were they not?

A. Yes, sir.

Q. In other words you were selling the products of Fansteel and Vascoloy, which were high-speed cutting tools, of extra hard quality?

A. They were carbide cutting tools.

Q. Pardon me?

A. Carbide cutting tools.

2643 Q. Carbide.

A. Tantalum carbide cutting tools.

Q. And your capacity, I presume, was not only that of a salesman, but also that of a technical engineer, in demonstrating the best methods of use of those tools, along the lines of missionary work for further possible sales, I suppose; is that correct?

A. I instructed the shop foremen in their use, and also the operators.

Q. Well, when you came back, you had been away I believe three years; is that right?

A. About that.

Q. That is, you had been away from actual production work in your own plant for a period of approximately three years?

A. About that period.

Q. And you returned on September the 8th.

A. Yes.

Q. You were kind of out of touch, I suppose, with the men in the plant, and what they had been thinking, during your absence; is that correct?

A. As to their thoughts, yes, sir.

Q. Of course, I suppose that the first day you were back, you went around through the plant, and saw all of the old employees, and the new ones as well, did you?

A. Quite naturally, yes, sir.

2644 Q. Yes. You had worked with those men for a great number of years, many of them?

A. Yes, sir.

Q. A great many of the men who testified here had been there a considerable length of time, had they not?

A. Well—

Q. Mr. Moxey had 24 years, I believe, with the company? Earl Fagan, 20 years; Clarence Dreyer, 17 years; and Otto Latz—I have forgotten how many years service he had. But all of those men were the old standby's of the company, were they not?

A. They were old men.

Q. And men upon whom you could rely, at least to tell you what the sentiment of the workmen was; is that correct?

A. They were men—

Q. (Continuing.) I mean, you would have no hesitancy in going and talking to those men, whom you had known for a good many years; that is correct, is it not?

Mr. Swiren: Just a moment. Let us have one question propounded at a time, and not two or three at a time.

Mr. Walsh: Well, I do not care.

Mr. Swiren: Put them one at a time.

Q. (By Mr. Walsh.) The answer is—or rather, the question is that you did not feel any hesitancy in going around and talking to the boys, did you?

2645 A. I don't see why I should have felt any hesitancy about going and talking to the men, or going and talking to anybody.

Q. They had worked for you for a long time?

A. They had worked for the company.

Q. And you had worked with them for a long time?

A. I might have made inquiry about the newest baby, too.

Q. Yes.

A. I was interested in their welfare.

Q. Sure. Now then, on the 10th of September, as I get your story from your testimony here,—on the 10th of September you did not have the petitions then in circulation; is that correct?

A. That is right.

Q. I believe on the 10th of September, the committee from the organization, or from Lodge 66, had submitted to you a proposed contract, had they not?

A. Yes, sir.

Q. And it was concerning the terms, or some of the terms of that contract, notably the checkoff provision, and the closed shop provision, that you wanted to discuss it with these older men; is that correct?

A. Yes, sir.

Q. You felt that those provisions were something that the older men would not be in favor of, and you wanted to
2646 find out whether or not they were in favor of them; is that right?

A. Why, I did not know. I was a stranger there, as far as what they were thinking was concerned.

Q. Yes.

A. And I wanted to find out.

Q. Yes. So, then, a few days later you caused to be circulated several petitions throughout the plant, and obtained 125 signatures.

A. The petitions were circulated.

Q. Oh, first, before you answer that, let me ask you another question.

Let me have Board's Exhibit No. 12, Mr. Reporter.

(The exhibit was produced.)

Q. (By Mr. Walsh.) I will hand you what has been marked Board's Exhibit No. 12, in evidence in this proceeding, Mr. Anselm, and I will ask you if that is the contract that they proposed on September 10th that they enter into with the company?

A. It looks like a copy of it.

Q. I think you furnished that to us, or your office did; did you not?

A. I think so.

Q. Now then, some time, you say two or three days, after the 10th of September, which would make it either the 12th or 13th of September, you caused to be circulated cer-
2647 tain petitions to obtain an expression from the employees as to whether they wanted an Employees Representation Plan?

A. Yes.

Q. Now, at the time those petitions were circulated, had you caused to be mimeographed and distributed to the men, a proposed plan?

A. (No answer.)

Q. Mr. Anselm, I will hand you Board's Exhibit No. 15, and ask you if you had caused that to be circulated?

A. Yes, I did that, and the reason for that was that I only had two copies in pamphlet form, and the employees were asking for more copies; so I had it mimeographed, and sent out through the shop.

Q. Do you recall about what date that was sent out, Mr. Anselm?

A. Oh, it preceded—

Q. The circulation of the petition?

A. Yes.

Q. When the boys were in there on the 10th, at that time you gave them a copy of the Employees Representation Plan that was in force at the American Steel & Wire Company, did you?

A. I gave them two copies.

Q. All right.

A. They asked for them.

Q. That has been introduced in evidence here as
2648 as Board's Exhibit No. 13.

That is the pamphlet, is it not?

A. Yes, sir.

Q. Now, after you had circulated or caused to be circulated, those petitions, and had sent out those mimeographed copies of the Employees Representation Plan, you then discussed the matter with Mr. Aitchison; is that right?

A. I sent out the copies of the Employees Representation Plan first, and then—

Q. And then circulated the petitions; is that correct?

A. Yes, sir.

Q. And then you discussed the matter with Mr. Aitchison; is that right?

A. That is the correct sequence.

Q. And at that time Mr. Aitchison told you that what the men wanted was their own affair?

A. Yes.

Q. And that you should not interfere in it; is that correct?

A. That is what he said.

Q. And then you ceased your activities along that line; is that correct?

A. I was never very active, and that is all I did.

Q. Well, I mean, after you had done what you said you had been doing; is that correct?

A. Yes, sir.

2649 Q. Now, your conversations with these various men, concerning which you have testified here,—and I will name the ones that have been referred to, whom you were talking to; those are Fagan, Clarence Dreyer, Ted Daluga, Frank Moxey, Stricklen and Otto Latz; those conversations took place on the same day, after the committee from the union had presented this contract; is that correct?

A. They probably all took place on the same day, but some probably the next morning.

Q. Some the next morning?

A. Yes, sir.

Mr. Walsh: That is all.

Mr. Keele: Nothing further.

Trial Examiner Dudley: You are excused.

(Witness excused.)

Mr. Keele: The question now arises, if the Examiner please, with respect to those subpoenas.

Trial Examiner Dudley: I got the subpoenas, as you know, yesterday, at five-thirty. I telegraphed to Washington about the matter—

Mr. Keele: Pardon me; you mean, you got the application.

Trial Examiner Dudley: I should say, I got the application.

Mr. Keele: Yes?

Trial Examiner Dudley: For the subpoenas. I tele-

2650 graphed Washington, and sent the application in to Washington as on as I could write a letter, and forward it air mail; but I have not heard anything as yet, and

I would not expect to hear anything until perhaps noon today.

Mr. Swiren: Subject to testimony to be adduced by the witnesses and documents asked for in the application, we are ready to rest respondent's case. We do not want to make an offer of proof in connection with those items, if there is any chance of getting the subpoenas, and getting the material; so we would like to close, with the reservation that if we get the subpoenas and can get them served in sufficient time before the conclusion of this hearing, we can bring in the testimony that is called for, from those witnesses and from those documents. Otherwise, that we will have leave at that time to make an offer of proof, which will be considered as though it had been made prior to the close of our case.

Mr. Walsh: There is no objection to that, if the Examiner please.

Mr. Swiren: All right. That is agreeable to the Examiner also, is it?

Trial Examiner Dudley: Yes, that is agreeable. Might I ask if there is any chance of a possible stipulation as to what those people would testify to, if they were brought in?

Mr. Swiren: Well, that may be. We will be glad to discuss it with Mr. Walsh during the day.

2651 Mr. Walsh: I shall be glad to discuss it.

Mr. Swiren: Or after the conclusion of the hearing.

Trial Examiner Dudley: Very well.

Mr. Swiren: There is some evidence with respect to Mr. Pilkington.

Mr. Keele: We know what he said to us, but going beyond that, as to the information on which he based the statement, is something we cannot say.

Mr. Walsh: Well, we can check up.

Mr. Swiren: We can discuss that.

Mr. Walsh: Yes.

Mr. Swiren: And it might be possible to stipulate.

Mr. Keele: Just so that it goes in.

Mr. Walsh: It can go in at any time before we close.

Mr. Swiren: I thought you were going to dictate it to the reporter.

Mr. Keele: I think we had better sit down at noon and prepare it. As I understand it, the Examiner does not care whether it goes in at this time, or whether it goes in before the close of the case.

Trial Examiner Dudley: Oh, no; a stipulation may go in at any time.

Mr. Keele: All right.

Trial Examiner Dudley: Then the respondent rests its case, subject to the privilege of reopening?

2652 Mr. Swiren: As just explained, and requested, yes, sir.

Trial Examiner Dudley: All right.

Mr. Walsh: I have some rebuttal, if the Examiner please.

Trial Examiner Dudley: You may proceed with your rebuttal.

Mr. Walsh: John Kondrath.

JOHN A. KONDRATH, recalled as a witness for the National Labor Relations Board, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Kondrath, you have been previously sworn, and testified several times in this proceeding, have you not?

A. Yes, sir.

Q. In going over your previous testimony, I noticed that I omitted to ask you some questions concerning how people became members of your union; and I would like to direct your attention at this time to that phase of the proceeding.

How did you go about securing members for the union?

A. Well, through the applications that we have; those are the only applications that there were; and at the first meeting, there were around about 40 members had signed up.

Q. Yes?

A. That is, there was no officers, or nobody, selected in that meeting there.

2653 Q. I see.

A. And during that meeting, Meyer Adelman had given out some applications for more memberships, and those that received them, they went to houses where people lived, and signed them up.

Q. Now, did the first meeting, at which you say 40 were present, discuss the way they were going about the solicitation of members?

A. How is that again?

Trial Examiner Dudley: The reporter will read the question.

(The question was read.)

Mr. Walsh: I will withdraw that question.

Q. (By Mr. Walsh.) Did you have an Organization Committee?

A. Yes, sir, we did have an Organization Committee.

Q. How many were on that committee?

A. To my knowledge, around about 12.

Q. Now, after an application would be made—let me withdraw that.

I believe you have already identified this as being an application—or a sample application; Board's Exhibit No. 5.

A. Yes, sir.

Q. Except that it was printed on a white card.

A. Yes, sir.

Q. Well, after that was signed, what became of the card?

2654 A. The cards were turned over to Meyer Adelman, to send in to the main office at Chicago.

Q. And did the union have to vote as to whether a person applying for membership, would be accepted into the lodge?

A. Well, it was not necessary to vote on it. According to our information from the organizer, immediately anyone signed these applications, they were members of the association.

Q. I see. As a matter of fact, if you read the first line of the application there, it says, does it not, "I accept"—

A. That is right.

Q. (Continuing.) "—membership in the Amalgamated Association of Iron, Steel and Tin Workers."

A. That is right.

Q. Now, after the man or woman had signed this application, did the union vote—or, no. I will withdraw that.

After the man or woman had signed the application, did the union swear them in?

A. Well, after the meetings where we had temporary offices set up for the benefit of the membership, and for experience about how the lodge should be run later, after they were fully organized, why, there was a ceremony to that effect.

Q. And you administered the obligation of the union, did you?

A. Yes.

Q. To the various members?

A. Yes, sir.

2655 Q. Now, would you do that singly—
A. No.
Q. —or would you do it in groups?
A. It was done in groups.
Q. Usually at every meeting, you had two or three persons coming in; is that right?
A. Yes, sir.
Q. And those were all of the formalities that there were, to people becoming members of the organization; is that right?
A. Yes, sir.
Q. And all of the persons whose cards have been introduced here into evidence, at one time at least had the obligation delivered to them—or rather, administered to them; is that right?
A. To my knowledge, all of them had, except one member, Ludlow. I don't remember him ever coming into a meeting.
Q. I see. Now, prior to September 10th, 1936 did you make any survey to determine how many people working at Fansteel were eligible for membership in your lodge?
A. Through the time cards that were punched at both buildings 3 and 5. All of the employees, including the bosses, punched those particular cards for time, the time when they started, and the time when they left the plant.
Q. Now, how many cards did you find?
Mr. Swiren: Just a moment.
2656 A. Well—
Mr. Swiren: Just a moment. That is objected to, if the Examiner please, taking the two buildings. We do not know how many of them are eligible, and how many are not. There is a way of getting the direct information, and we would have provided any information that counsel for the Board might want.
Mr. Walsh: Oh, by the way; excuse me. This is off the record, Mr. Reporter.
Trial Examiner Dudley: Off the record.
(Discussion outside the record.)
Q. (By Mr. Walsh.) Tell me just what you did, Mr. Kondrath.
Mr. Keele: Just a moment. That is objected to.
Mr. Swiren: The record already has an objection.
Mr. Walsh: Pardon me. There is an objection.
Trial Examiner Dudley: The objection is overruled.
A. What is the question?

Q. (By Mr. Walsh.) Tell me just what you did?

A. What I did was, I counted the cards in the rack, that is, where the clock is; and I found that in both buildings there is 181 cards.

Q. All right. Now, did you make some—or, no; let me withdraw that.

Mr. Kondrath, I will ask you whether or not the bosses punched time cards, too?

A. They did.

2657 Q. And did you make some deductions from that number, for the bosses?

A. Yes. I—

Mr. Swiren: Just a moment. Just answer the question, please.

Mr. Walsh: All right.

Q. (By Mr. Walsh.) Now, what deductions from that number of 181, did you make?

Mr. Swiren: Just a moment. That is objected to unless this witness is in a position to know what the position was of these socalled "bosses" which have been mentioned.

Trial Examiner Dudley: The witness may tell what he knows.

Mr. Swiren: If the Examiner please, I think it ought to be with reference to specific people, and not his own private determination of who ought to be in the list or who ought not to be in the list.

Trial Examiner Dudley: I will ask the witness to be as specific as he can.

The Witness: What is the question?

Mr. Walsh: Read the question, please.

(The question was read.)

A. Well, I made deductions of the bosses, such as Red Hall, Schardt, John Zivic,—that is three—Frank Mack, Jimmy White, Art Holm, Dean Bennett, John Welch, Presler, and Sims.

2658 I don't know just how many of those people that makes.

Q. (By Mr. Walsh.) Now, you made a total of how many deductions?

A. Well—

Q. You have named some. Now, how many was the total that you deducted?

A. Well, from my memory, at that time I figured around

about 20. I don't know just how many I named right now; I didn't count them.

Mr. Swiren: We ask that the answer of the witness be stricken from the record, unless he names who they are. Otherwise we have the private conclusion of the witness as to whom he might include and whom he might not include. I think it is the function of the Board to pass on that, and not the witness.

Trial Examiner Dudley: The objection is overruled.

Q. (By Mr. Walsh.) Mr. Kondrath, was there a list posted any place in the plant that you saw, containing a list of names of those whom you considered to be ineligible for membership in your union?

A. You mean, that were eligible, or not?

Q. No, that were not eligible.

A. Well, as to the bosses—later, when Mr. Luther Henry became shop superintendent, they had posted a notice at the stock room window, to that effect, as to who has a right
2659 to sign requisitions for material out of the stock room.

Q. Yes?

A. (Continuing.) And they were considered as foremen, or bosses, in the plant.

Q. (By Mr. Swiren.) Is that what the notice said?

A. Yes, sir.

Q. The notice said "foremen", did it?

A. Yes.

Mr. Swiren: I am just trying to get the exact language of the notice.

Mr. Walsh: Well—

The Witness: Well, they were foremen, authorized to sign requisitions.

Q. (By Mr. Walsh.) Do you know whether the list said that all of the men authorized to sign requisitions, were foremen?

A. Well, there was quite a few on there. I don't remember exactly the words, but that is what it meant, anyway.

Q. I see. Now, were any of the men on this list, members of your union?

A. No, sir.

Q. (Continuing.) On September 10th?

A. No.

Q. Did you ever consider that they were eligible to belong to your union?

A. No, we didn't.

2660 Q. Now then, from this number of 181 times cards, you deducted how many names, of people whom you felt were not eligible for membership in your union?

A. Well, I deducted about 20 at that time.

Q. So, then, that would leave you at that time 161 persons—

A. Yes.

Q. —who were eligible for membership, eligible to belong to Lodge 66; is that right?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) Mr. Kondrath, were you a member of the committee that solicited members?

A. A member of the committee that solicited members?

Q. Yes.

A. Yes, sir.

Q. You solicited the membership of Louis Bereczky, did you not?

A. Louis Bereczky?

Q. Yes, sir.

A. Well now, I don't remember whether I solicited him, or not.

Q. Do you remember telling him that if he did not join when you asked him to join, it would cost him twice as much to do it later on?

2661 A. No, sir.

Q. You do not remember that?

A. No, sir.

Q. Are you sure you did not say that?

A. No, I didn't.

Q. You never said that to anybody?

A. No, sir, not that I remember of, telling anybody about anything concerning the fees, outside of the one dollar.

Q. Did you ask anybody to join in the plant at all?

A. Yes, probably during noon hours I have.

Q. While you were inside the plant?

A. Yes, sir.

Q. But you never mentioned anything about the union while you were going on with your work during working hours, did you?

A. Well, that would all depend. If somebody happened to come up and ask me something, why—

Q. You would stop and talk to him about it, would you?

A. Well, I wouldn't really stop, no, sir. It wouldn't involve—or rather, it wouldn't interfere with working conditions.

Q. But you would go on and talk about it, would you?

A. Oh, I probably would say just a word or two about it, yes, sir.

Q. Well, tell us the word or two.

A. What?

2662 Q. Tell us just what you would say.

A. Well, that would depend on what it was; depending on what somebody asked me.

Q. Well, just go ahead and tell us what they would ask you, and what you said.

A. Well—

Q. (Continuing.) Tell us who asked you the questions, and what you said to them.

A. Well, I don't remember right now who particularly asked me particular questions.

Q. There were a number of them, were there not?

A. Well—

Q. A number of men?

A. Well, there was some.

Q. About how many?

A. I don't remember.

Q. About how many?

A. I couldn't remember how many.

Q. Were there eight?

A. Well—

Q. As many as eight?

A. Well, it might have been eight, or it might have been more or less. I don't know.

Q. It might have been 12, too, is that right?

A. I wouldn't say.

2663 Q. Well, can you tell us one of those men, the name of one of those men?

A. I don't know.

Q. What?

A. I don't remember right now who it was asked me.

Q. You cannot remember a single one?

A. Well, I can remember members, yes, sir, but I don't remember just what they said.

Q. Can you remember a single man, or the name of a single man, whom you spoke to in the plant about the union during working hours?

A. Oh, I might have talked to them, but I don't remember.

Q. The fact of the matter is, Mr. Kondrath, you did so much talking about it, that you cannot remember now to whom you did talk; is that not right?

Mr. Walsh: I object.

A. Oh, I don't think I did so much talking.

Mr. Walsh: Just a moment. That is objected to as not proper cross examination, if the Examiner please.

Mr. Swiren: This is on the question of how he solicited members. I am trying to find out about that.

Trial Examiner Dudley: It appears to be a conclusion of counsel, rather than a statement of the witness, but I will let it stand.

Mr. Swiren: What is that?

2664 Trial Examiner Dudley: I say, it appears to be a conclusion of counsel, rather than something from the witness, but I will let it stand.

Mr. Swiren: It is a most natural conclusion.

Q. (By Mr. Swiren.) You cannot tell us the name of any man to whom you talked, you cannot remember that now, and you cannot remember what any man said to you, or what you said to him in the plant; is that correct?

A. Well, offhand I can't, unless you can make some statement there, as to what somebody said, or something like that.

Q. I was not there, was I, Mr. Kondrath?

A. No.

Q. And you were there?

A. I was.

Q. But you do not remember any of it?

A. Well, not offhand I don't.

Q. All right. Now, referring to that notice about requisitions for supplies, or signing requisitions: Jay Bisbee's name was in that notice also, was it not?

A. I don't remember.

Q. How?

A. He probably was.

Q. All right. And you asked Bisbee to join the union, did you not?

A. So I did.

2665 Q. Yes.

A. (Continuing.) I don't know whether I asked him before that or not, though; I don't remember.

Q. And the notice said that the following people therein named would have the right to requisition supplies; is that not right?

A. Yes, sir.

Q. It did not say anything about what authority they had, or whether they were foremen, or whether they were straw bosses, or anything else, did it?

A. (No answer.)

Q. That is right, is it not?

A. Well, I don't remember just what it did say, word to word.

Q. Well, you will not swear, will you, Mr. Kondrath, that it said, "The following men are foremen"?

A. I believe it was—I believe it said that they were authorized to sign requisitions.

Q. Yes, for supplies.

A. For supplies.

Q. All right. Now, you did not consult with any of the officials of the company as to how many employees were working in production at the time you checked these time cards, did you?

A. No, I didn't.

Q. By the way, when was it you said you checked those time cards?

2666 A. Well, it might have been the last part of August, or the first part of September, or somewhere along in there.

Q. And you do not know whether all of the—I will withdraw that; strike it out. Let me get this exhibit.

You did not check the payroll records of the Fansteel Company, did you?

A. No.

Q. And you did not ask at any time as to how many employees there were in production, did you?

A. Well, this was merely guesswork. I figured off of the time cards, that they were working men, and I figured that the laboratory doesn't punch out there, and neither does the office, but only the working men and bosses punch out on those two particular clocks.

Q. There were some men who worked in the laboratory, who worked right in production, were there not?

A. Well then, they punched on this particular clock.

Q. Well, they are not hourly rated employees, are they?
A. The ones that help out in the laboratory, such as Ed Chapman and his helper, they punch out on this clock, yes, sir.
Q. I see. Did everybody who worked in the laboratory, punch out on that clock?
A. I imagine they do in their own building.
Q. Oh.
A. They have one in there.
2667 Q. Then there may have been some men who were working on production, who punched on that clock, so far as you know?
A. That I don't know.
Q. Now, you mentioned a little while ago the fact that members who signed applications, were sworn in from time to time as members of the union. Is that right?
A. Yes, sir; they were, in groups.
Q. Yes, but not singly.
A. They could have been a member, without swearing.
Q. Well, do your by-laws say that?
A. We have no by-laws yet.
Q. Have you any minutes of your meetings?
A. I believe we have.
Q. Do you know whether any of the minutes say that?
A. Well, I couldn't say as to that. I don't remember all of the minutes that is in the book.
Q. You know that the constitution of the Amalgamated Association of Iron, Steel and Tin Workers of North America, provides for the swearing in of members before they become members, do you not?
A. Yes, they do.
Q. Yes. And did you keep track personally of the men who were sworn in?
A. No, I didn't.
Q. So that when you say that you think that all of
2668 the men who signed cards were sworn in, you are just guessing, are you not?
A. Well, yes. I couldn't say that they all were. There might have been one or two that were missed.
Q. Might there have been 10 or 15 who were missed?
A. The only one I know of particularly was Ludlow, because I had never seen him in a meeting.
Q. You attended all of the meetings, did you?
A. Well, I might have missed one.

Q. Well, he was not sworn in at that meeting, was he?
A. Which meeting?
Q. The meeting you missed.
A. I don't remember.
Q. You mean, you do not know what happened there?
A. No.
Q. But nevertheless, your guess is that they were all sworn in, except one or two?
A. Well, that is just about right.
Q. And you are sure that it could not have been 20 or 30, who were not sworn in?
A. Well, I wouldn't say so.
Q. You would not say?
A. No, sir.
Q. Well, how many members can you remember, who were sworn in?
2669 A. Well—
Q. Just go ahead and tell us the names of those whom you do remember as being sworn in?
A. Well, I couldn't tell you all of the names. In fact I don't know everybody's name.
Q. I know you do not know everybody's name, Mr. Kondrath, but tell us some whom you remember seeing sworn in?
A. Well—
Q. Just do the best you can.
A. (No answer.)
Q. Oh, it should not be so hard to answer that question, if you saw so many sworn in. Just go ahead and tell us as many as you can.
A. Well, when you see a whole lot of people before you, you do not remember them all in rotation.
Q. Well, if you cannot remember them, you could not check them off against any membership list, could you?
A. Well, maybe I could do that, if I go over the list.
Q. Well, tell us as many as you can remember now. Let us just start with the first meeting at which any were sworn in. Who was sworn in at the first meeting?
2670 A. Well, now, let me see. At the first meeting—well, I couldn't say how exact I could be. Some probably was at other meetings sworn in, too. I can't recollect the faces that I seen at different meetings.
Q. That is the best answer that you can give to that question, is it?
A. That is about all.

Q. All right.

A. Because the secretary would know more about it than I would.

Q. You are testifying about it, and you are testifying under oath, and I want to ask you these questions. If your secretary testifies about it, we will ask him.

A. O. K.

Q. Now, tell us who was sworn in at the second meeting?

A. Well, I couldn't pick out the groups in my own mind right now. This thing happened quite a long time ago, and all kinds of excitement has happened since.

Q. You cannot name us any of those people, then?

A. Well, I could probably name, at the first meeting, Fred Hensley, Ed Ruck, Dugan, Joe Petraitis, Angelo Galbavy, Roy Brown, and Bond—

Q. Who?

A. Bond, I believe; John Germer, Swanson; and some I don't remember.

2671 Q. Yes, do not forget him.

A. Well, that is about all I can remember.

Q. Well—

A. I can't place them in groups.

Mr. Walsh: Pardon me—

Q. (By Mr. Swiren.) How many do you remember at the second meeting—

Mr. Walsh: If the Examiner please, if I may interject myself at this point, I would like to inquire to what end this cross-examination is addressed? Will counsel state?

Mr. Swiren: This cross-examination is addressed to the direct examination of this witness. It is perfectly proper cross-examination, when this witness bulks the members so conveniently for counsel for the Board. We have been trying to get the records of this organization ever since this hearing was started, and for a week before, but instead of that, all we get is statements from memory by witnesses. I therefore think—

Mr. Walsh: I do not think I touched on that matter in the direct examination of the witness. I do not think I asked him anything about the number of members in the Lodge.

Mr. Swiren: Well, the record is perfectly clear, and will speak for itself.

Mr. Walsh: I simply asked him about the persons working at the Fansteel Company, who would be eligible to

2672 membership in the Lodge.

Mr. Swiren: It was the questions and answers with respect to the men who were sworn in that brought forth this cross-examination.

Trial Examiner Dudley: Of course, it is understandable that the witness would not remember who was sworn in at one meeting, and who was sworn in at another, although he may at the same time know that all of the people were sworn in.

Mr. Swiren: With the permission of the Examiner—

Trial Examiner Dudley: But if counsel wants to go ahead further along that line, I will permit him to do so. His memory has been pretty good.

Mr. Swiren: Yes, I do want to go ahead, and see how good his memory is, and how accurate his statements are.

Trial Examiner Dudley: You may proceed.

Mr. Swiren: And I would also like to remind the Examiner, as we have pointed out a number of times, that the question of credibility is a question for the Board, and not for counsel or the witness.

Trial Examiner Dudley: I have ruled that you may proceed.

Mr. Swiren: Will you answer the question?

The Witness: What is the question?

Mr. Swiren: Read it.

(The question was read.)

2673 At the second meeting, I don't remember, but there was quite a few of them there.

Q. Do you know how many were sworn in at the second meeting?

A. How many?

Q. Yes, sir.

A. Oh, I judge around ten.

Q. Around ten?

A. Yes.

Q. Can you name any of those ten?

A. No, no.

Q. Well, all right. If you cannot name them, let us try something else. Did you keep a list of all of the members, and check them off as they were sworn in?

A. The secretary did, I guess.

Q. You did not do that?

A. No, sir. All that I done was to preside over the meetings. I didn't keep no record of anything.

Q. Did you watch to see whether the secretary was keeping track properly or not?

A. Why, yes.
Q. Or did you just rely on him?
A. I think he done a pretty good job, as far as he was concerned.
Q. You did not check up on him, to see that he was doing it properly, did you?
2674 A. No, I didn't.
Q. Who kept the books in which the oaths of those who were sworn—or, from which the oaths of those who were sworn in by groups, were checked off?
A. I don't know that there is anything mentioned, towards the swearing of members in. We merely kept the membership record.
Q. Who kept that?
A. Carl Swanson kept the membership record, as far as dues was concerned; and Ed Ruck was corresponding secretary. He wrote up the minutes.
Q. They both had lists of members, then, did they?
A. Why, I don't know if they both had a list of members or not. One had the corresponding—or, rather, the minute book; and the other one had the members, the membership.
Mr. Swiren: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: That is all; thank you.
(Witness excused.)
Mr. Walsh: Recall Mr. Swanson.

CARL ANDREW SWANSON, previously sworn, was recalled as a witness for the National Labor Relations Board, and testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Mr. Swanson, you have pre-
2675 viously been sworn, and have testified several times in this cause, have you not?
A. Yes, sir.
Q. I will hand you a group of cards which have been for convenience listed here as Board's Exhibit No. 19, and I will ask you if you have examined that group of cards?
A. Yes, sir.
Q. No one of those cards bears a date, upon which the application for membership in the union was made; is that right?

A. Yes. There are some additional cards here, that don't belong in here, I believe.

Q. Are there a good many?

A. There are some.

Q. Now, have you checked those cards against your records; that is, the records that you keep as the financial secretary of Lodge No. 66?

A. Yes, sir.

Q. And have you determined the date upon which the persons who are named in those cards, became members of Lodge 66?

A. Approximately, yes.

Q. Approximately.

A. Yes, sir.

Q. When you say "the approximate date", Mr. Swanson, do you mean the month in which they became members?

A. With reference to some of them, the month, and
2676 some of them even to the day of the month.

Q. I see. All right. Now, I will go over this list with you, and you tell me the dates that you find the persons named became members of Lodge 66.

A. All right, sir—

Mr. Swiren: Just a moment. That is objected to, if the Examiner please. The records ought to be brought in. It seems to me there has been a consistent effort here to avoid letting the Board see what is in those records, but instead we are getting these statements second hand, third hand and fourth hand, in the way of guesses, estimates and approximations.

Trial Examiner Dudley: The witness may answer, if he knows.

Mr. Swiren: I would like to request the Examiner to ask the witness, whether those records are present in the hearing room here, available for examination and inspection?

Mr. Walsh: That is objected to, if the Examiner please. I ask that I be allowed to continue my examination.

Trial Examiner Dudley: Let counsel proceed with his direct examination.

Q. (By Mr. Walsh.) H. Bond.

A. Yes, sir.

Q. When did he become a member of Lodge 66?

A. July, 1936.

2677 Q Mabel Carlseen.

A. August 21, 1936.

Q. Pardon me, I did not ask about A. J. Bunton.
A. July, 1936.
Q. Clarence Drayer.
A. July, 1936.
Q. Alma Herman.
A. November, 1936.
Q. Elsie Herman.
A. November, 1936.
Q. Lydia Jorski.
A. November, 1936.
Q. Eric Lindberg.
A. February, 1937.
Q. William B. Magness.
A. July, 1936.
Q. Mary Worklund.
A. Morklund?
Q. Well, I am not sure. I believe that is a "W".
A. Well, maybe it is. I don't know. It looks like an "M" to me.
Q. What was that date?
A. That was November, 1936.
Q. David Nostell.
A. November, 1936.
2678 Q. Theodore Ohlson.
A. August, 1936.
Q. Victor Oliver.
A. February, 1937.
Q. Joseph Petraitis.
A. July, 1936.
Q. Orvo Romppaine.
A. August, 1936.
Q. Merritt Pratt.
A. August, 1936.
Q. LaVerne Salo.
A. January, 1937.
Q. Orlin Swanson.
A. February, 1937.

Mr. Walsh: If the Examiner please, at this point I would like to state that I have written the dates, as testified to by the witness, on Board's Exhibit No. 19, which I now offer in evidence.

Mr. Swiren: To which we object, and we also move that all of the testimony of the witness be stricken from the record. We can understand relaxing the rules of evidence,

where it may be difficult to ascertain or develop the evidence as required by the ordinary rules of evidence; but there is no showing of that here; the evidence is in the possession of this witness; and the best evidence ought to be
2679 brought before the Board, and second, third and fourth hand information ought to be rejected.

Trial Examiner Dudley: The objection is overruled, and Board's Exhibit 19 is admitted in evidence.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 19, Witness Swanson.)

Q. (By Mr. Walsh.) Mr. Swanson, in your first testimony concerning the members of Lodge No. 66, on various dates in September and in February,—that is, in September of 1936 and in February of 1937,—you were not at that time in possession of the records, or they were not available to you; that is correct, is it?

A. That is corect.

Q. I will ask you now whether you have had any opportunity to inspect your records, and determine how many members you had on September 10th—

A. Yes.

Q. —1936?

A. September 10th, 1936, yes, sir.

Q. How many members were there of Lodge 66—

Mr. Swiren: That is objected to.

Trial Examiner Dudley: Just a moment.

Q. (By Mr. Walsh, continuing.)—on September 10th, 1936.

Mr. Swiren: That is objected to. We ought to have those records in this hearing room, if the Examiner please.
2680 It seems to me that they have had enough time to do anything they wanted with those records, since we first asked for subpoenas, but still we do not get those records, but, instead, just a guess.

Mr. Walsh: If the Examiner please, I resent the continued inference that the government is attempting to fix its case. Those suggestions are continually coming from counsel on the other side, and unless the government obtains and receives from counsel for respondent, the respect to which it is entitled, I am very much afraid that we will have some serious differences of opinion here.

Mr. Keele: Let me say this, that heretofore most lawyers have had respect for their government, but when the time comes that a governmental agency will permit testi-

mony to be adduced out of the memory of a man, based upon records which are available, and which are under the control of that man, and for which the other party to the litigation has asked, and asked repeatedly, and for which they have applied for the proper process designated by the government, to obtain such information; and when, repeatedly, flimsy evidence of the kind that has been adduced here, which is based entirely on memory, or hearsay, is adduced, and is permitted to go in, at a hearing before a governmental tribunal, when such cards or records are not compelled to be produced, when the other party to the litigation is com-
2681 pelled by subpoenas to produce all of its records pertinent to the inquity, and many records not pertinent to the inquiry; or, in other words, when it becomes very evident that the matter is a one-sided matter, and that there is partiality, whether it be in the person of the Examiner, or the person of the attorney for the Board, or the Board itself, or at least when it appears that the governmental agency which has control of the machinery for enforcing the production of such records, has taken the position that it is not necessary to do so in one case, but it is in the other; then I say perhaps there is some basis for a doubt in the minds of sincere and honest people, who have made an effort to support their government, and to support the law, as to the impartiality and fairness of the government.

If that be contempt, make the most of it! I think then the time has come when we no longer have a government, for which we need show respect.

Now, we have attempted to conduct ourselves here, under stress and strain in a proper manner, and in a judicial manner, but I do not think the position can be stated too strongly that we contend for, and that is, that when the rights of the respondent, which are as important supposedly as the rights of the men who are named in the complaint, are concerned, and are in the balance, I think that when that time comes, it is only fair that the respondent should have the same rights as the men, and that we should not have to
2682 depend upon the memory of a man who is an interested party to this proceeding, based upon records which are available, without the production of those records in the case.

I think that is manifestly unfair, and it is hard indeed for people, particularly impartial people, to see wherein it is fair; and there is some doubt in the minds, not only of the lawyers here, but of the parties litigant, or at least one of

the parties litigant, through its officers, stockholders and directors, who have followed this case, as to the fairness of the government in this situation, as manifested by the National Labor Relations Board. Therefore we do keep renewing this request.

We do not want to be contentious or captious about it, but I think it is a matter of the first importance. This whole case depends, so far as the government is concerned, upon establishing the proposition as to whether or not Lodge 66 had a majority of the employes of the Fansteel Company; and without the establishment of that proposition, this whole case falls. I do not think there can be any question about that.

Now, then, that being the most important single—issue in this case, it seems to me we ought to have every opportunity to inquire into that with the utmost fullness, freeness and fairness, and the repeated failure of the government, if not refusal, to compel these records to be produced, can-
2683 not but militate adversely against us. That is why we keep renewing this request. And I submit that we are not contemptuous in our attitude, but that, rather, we are outraged, and I think most properly so. We are stunned! Certainly, it is a most strange procedure, one with which not one of the lawyers who are representing the respondent here, have had any previous experience, and we are astounded that that sort of thing can go forward before what purports to be an impartial agency of the government; I say that as a former government prosecutor. We were never permitted to take such liberties.

Now, I must submit that until those records are produced, the attorney for the Board ought not to be permitted to go forward probing into the memory of a man who bases his memory upon cards and records which are not produced.

Trial Examiner Dudley: I merely call the attention of counsel to the fact that there is nothing the Trial Examiner can do with reference to getting subpoenas. He has no right to issue subpoenas.

Mr. Keele: I do not make that charge.

Trial Examiner Dudley: The Trial Examiner reported your application as soon as he could, by telegram and by air mail, and there was nothing else that could be done.

Mr. Swiren: I think the Examiner should have done that at the opening of the case, or when this witness first testi-

fied with reference to the number of members, and we
2684 renewed our application. I do not think the Examiner acted promptly at all.

Mr. Keele: I might say—

Trial Examiner Dudley: In that connection, Mr. Swiren, I might point out to you that you stated last Friday that you were going to renew your application, and at that time you were very vague as to what you wanted to renew your application for.

Since that time, on Monday or Tuesday, there was considerable discussion about a stipulation, as a result of which a stipulation was entered into, which did do away with the necessity of obtaining the subpoenas which you wanted, in many cases, as you now recognize.

I also wish to call your attention to the fact that I asked you, and I asked Mr. Banker to ask you, to make a motion in writing, beginning on about Tuesday or Wednesday of this week; and that I did not get your motion in writing until last night at 5:30, when it was sent promptly to Washington.

Mr. Swiren: I want to say this, in view of the remarks of the Examiner, that last Friday we renewed our application in writing, a copy of which is in the possession of the Examiner, and there was nothing vague or uncertain about it.

The Examiner first talked to me at the time of the stipulation, and I said that we might be able to eliminate
2685 some of the men, but that did not solve the problem of the records, and that is the point of controversy here now. It is not about the men; it is about the records.

As soon as I learned of the Examiner's request for an application in writing, which was yesterday, I prepared it. notwithstanding the fact that the rules require no such thing, but on the contrary provide that all applications and all motions to the Trial Examiner shall be oral.

Trial Examiner Dudley: Well—

Mr. Swiren (Continuing:) We have made application at least half a dozen times during this hearing. This is not something new.

Trial Examiner Dudley: I am sorry, but I cannot enter into any controversy with counsel.

Mr. Swiren: Well, the record will speak for itself, and I will stand on the record.

Trial Examiner Dudley: The witness may answer the question.

The Witness: What is the question?

Mr. Walsh: Will you read the question to the witness again, Mr. Reporter?

(The question was read.)

A. Either 90 or 91.

Mr. Swiren: What is the answer?

Mr. Walsh: "Either 90 or 91."

2686 Q. (By Mr. Walsh.) Now, Mr. Swanson, have you examined your records, and can you testify as to how many members there were on September 21, 1936?

Mr. Swiren: The same objection.

Trial Examiner Dudley: Overruled.

A. Approximately the same number.

Q. (By Mr. Walsh.) And that number was 90 or 91? Is that right?

A. Yes, sir.

Q. Now, have you examined your records, and can you tell me how many members you had on February 17, 1937?

Mr. Swiren: Have you finished the question?

Mr. Walsh: Yes,—read the question back, please, Mr. Reporter.

(The question was read.)

Mr. Swiren: The same objection.

Trial Examiner Dudley: Overruled.

A. Yes.

Q. (By Mr. Walsh.) How many members did you have on February 17, 1937?

A. I believe the records that I have, show 154.

Q. 154?

A. According to my records, yes, sir.

Mr. Walsh: You may inquire.

Mr. Swiren: Where is Exhibit 41; does anybody know?

2687 Mr. Walsh: Which exhibit?

Mr. Swiren: Respondent's 41.

Mr. Walsh: Here is a copy.

Cross-Examination.

Q. (By Mr. Block.) Mr. Swanson, when did you become secretary of the organization in question?

A. Well, I couldn't tell the exact date. I wasn't present at the meeting when I was elected to the office.

Q. Well, approximately?

A. Well—

Q. Tell us about when.

A. It was either in the latter part of July or the first part of August.

Q. 1936?

A. Yes, sir.

Q. At that time who was president?

A. That was the time when all of the officers were elected, I believe.

Q. Well, who—

A. President Kondrath,—

Q. Well, now, just in order to shorten it up, John Kondrath was president at that time, wasn't he?

A. Yes.

Q. And you were secretary?

A. I was.

2688 Q. Recording secretary?

A. Well, later on—

Q. Were you recording secretary or financial secretary or what?

A. Well, the officers at that time hadn't been interpreted properly, in electing them.

Q. Well—

A. (Continuing.) And later on they elected a treasurer. At first, I was financial secretary and treasurer both, I believe.

Q. All right.

A. But those duties were divided later on, and then I had the job of financial secretary.

Q. That still would be some time in August—about the middle of July or August, 1936?

A. Yes, when I was elected.

Q. Now, getting back to my question: John Kondrath was president during that period of time, was he not?

A. Well—

Q. Or acting president?

A. Kondrath was elected president at the same time I was elected.

Q. Well, who else did you have as officers, or who were acting in the capacity of officers of this organization at the same time that you are now speaking of; that is, in August?

A. Ed Ruck.

2689 Q. Ed Ruck?

A. Yes.

Q. He was what?

A. Recording secretary.

Q. All right. Did you have any other officers?
A. Well, there was, I believe, some guards, some inside and outside guards.
Q. I see.
A. And trustees, certain trustees.
Q. Yes.
A. Then there was a treasurer elected later, and I told you a minute ago, but just when he was elected, I couldn't say.
Q. All right.
A. And a vice president.
Q. All right. You had other officers, then.
A. Yes, sir.
Q. And you have named all that you can remember now, have you?
A. How?
Q. You named Ed Ruck.
A. Well, when they were all elected, I just couldn't say—
Q. No, no.
A. There were some elected after—
Q. Now, Mr. Swanson, just a moment; I am talking about the names of the officers.
2690 A. Oh.
Q. Who were those officers?
A. Well, there was Ed Ruck.
Q. All right.
A. Clarence Dreyer, I believe, was vice president at that time. He was elected and then later on he resigned. I believe Frank Zelenick was a trustee, and Raymond Du Bois and William Van Treeck, and Fred Hensley, I believe was one. Just when they were elected, though, I couldn't say.
Q. Well, that is all right. You have given us all that you can remember offhand, is that right?
A. Yes.
Q. Without referring to the records?
A. Yes.
Q. Do you know when you joined the organization, yourself?
A. When I joined?
Q. Yes, sir.
A. In July.
Q. July.
A. Yes, sir.
Q. Who solicited you to join the organization?
A. Why—

Q. To become a member of the organization.
A. I believe it was—I believe the first man I talked to about it was—well, I don't remember now who it was.
2691 I talked to somebody down at the plant, from the Contact Department, I believe it was; that is, they were talking about the union they wanted, and I was solicited, you might say, by President Kondrath, but that was later on in July.
Q. And then you went ahead and solicited some members also, I suppose, you yourself, did you?
A. I think so.
Q. After that?
A. Why, I believe I did.
Q. Yes. Now, is that your card before you there, your so-called application card?
A. Yes, sir.
Q. May I see it?
A. Certainly.
Q. When you were testifying here a few moments ago, you had these documents in your hand, did you not?
A. Yes, sir.
Q. And were you referring to them, for any portion of your testimony?
A. I have a record card of my own, that has the date of initiation on it, or the month—
Q. Well, no, Mr. Swanson—
A. I just had those—
Q. What I am getting at is this: When you were testifying here, in answer to some of the questions that were
2692 put to you by Mr. Walsh, you gave some dates.
A. Yes.
Q. Now, in giving that testimony, were you referring to any documents or records of any kind in the batch that was before you at that time; or were you giving these answers from memory?
A. I don't remember about the dates. What dates are you referring to now?
Q. Well, I will put it this way: What documents, memorandums or papers, if any, did you refer to, in answering Mr. Walsh's questions on your direct examination?
A. Well, in July, 1936—
Q. No, no, not in July, 1936, Mr. Swanson; I mean, today.
A. Well—
Q. What records—

A. Now, when I refer to a date, when I speak of July, 1936—

Q. All right. Go ahead.

A. (Continuing.) When I referred to that, I was referring to my card, that is the ledger card that I have to keep my record on, to show that I had a record of a man, to compare with the white card.

Q. All right.

A. That application card.

Q. All right. What were you referring to, then?

A. The month, or the—

2693 Q. No, no, Mr. Swanson. My question is what records, papers or memoranda did you refer to when Mr. Walsh was asking you questions, in answering those particular questions?

A. My ledger cards.

Q. I do not want these long speeches. I just want you to answer my question.

A. My ledger cards.

Q. And by "ledger cards", do you mean these cards that I now have in my hand?

A. Those pink ones.

Q. The pink ones?

A. Yes, sir.

Q. That are in between the white cards here?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. All right. Now, when you became a member of this organization, Mr. Swanson, Mr. Kondrath talked to you about it, I suppose, down at Fansteel a few times before you came in?

A. No, sir—I never talked to Kondrath at all about it, before it was formed.

Q. Well—

A. (Continuing.) I didn't even know that he was interested in it at that time.

Q. Well, he mentioned it to you outside, did he?

2694 A. Out side, yes, sir.

Q. Then when he got through convincing you that you should be a member, you signed a card; is that right?

A. He didn't convince me.

Q. Well, anyway, when you decided to become a member; put it that way.

A. Yes.

Q. And after you talked to Kondrath and several others, you signed a card?

A. Yes, sir.

Q. You signed one of these cards?

A. Yes, sir.

Q. That is right, is it?

A. I don't remember just when I signed the card—

Q. I did not ask you if you remembered when you signed it.

A. —whether it was that date or not.

Q. Mr. Swanson, if you will just listen to my questions, and answer them, I think we can shorten this up materially. It will not take us nearly so long.

A. O. K.

Q. When you decided to join, you signed one of these cards; that is right, is it not?

A. No, I don't believe I did sign that card at first.

Q. Well, did you sign a similar card?

A. I couldn't tell you the exact card that I did sign 2695 at that time, now.

Q. What kind of a card did you sign, did you say?

A. Well, I have got the stub at home; I would have to get that stub, to show you.

Q. You have those cards at home, have you?

A. Well, for each individual that signed one of those application cards, there was a stub on the end of it, and when he signed, this stub was detached, and handed to him for his receipt.

Q. All right. But getting back to your own case now, Mr. Swanson, you signed, as I understand your statement, some card that you do not have here now, but that you have at home; is that right?

A. No, no.

Q. Well, how was it, then?

A. Well, the stub was given to me—I signed the other card, and the stub that I got was supposed to be signed by the organizer, and that was supposed to be my receipt.

Q. Who has the stub to this card?

A. The card was turned in to the Steel Workers Organizing Committee, and my stub is at home.

Q. All right. And is that also true of the other membership cards, that you have some record in connection with other people, as to when they joined, or what they signed at the time, and you have those records at home?

2696 A. No, not that part; not the stub, no. I don't have the stubs or the cards. The application cards were all turned in to the Steel Workers Organizing Committee.

Q. Now, each of these members, I suppose, as they joined paid something to join, did they not?

A. Well, I couldn't swear to that either.

Q. All right. In other words, do you mean that it is not true, it is not a fact, that all of them paid something; but that some may have paid, and some did not pay anything to join the organization? Is that it?

A. Well, there was certain months in there, I believe, when we had exemptions.

Q. Well, now, there are records in existence in connection with that, are there not?

A. I believe there is.

Q. Yes. And those records will show who paid, and when they paid, and whether or not they paid, at the time their application was taken up; that is correct, is it not?

A. (No answer.)

Q. Is that right?

A. No, sir.

Q. What is that? There are such records that will show that, are there not?

A. I believe that there is, yes, sir.

2697 Q. There are records which will show a complete list of the membership of your lodge, as you claim it existed on February 17th, 1937, are there not?

A. In February?

Q. Yes.

A. Well, not—well, pretty close, yes.

Q. Pretty close?

A. Yes.

Q. All right. Where are those records?

A. The cards.

Q. That is the only record you have, it is?

A. Well, no, I have other—that is, I have other means to compute records, to compare with those cards.

Q. I see. Then you have other records, have you?

A. Well, they are not what you would call a certain form of record.

Q. Well—

A. (Continuing.) They are just a method that we use, between the office of the Steel Workers Organizing Committee and myself and the members.

Q. But you have such records?
A. Yes.
Q. That is, regardless of the type of records that they are—
A. Yes.
Q. (Continuing)—or whether they are of voluminous character or otherwise, you have certain records?
2698 A. I have rough records, yes, sir.
Q. And during the entire hearing you have been here in Waukegan, have you not?
A. Well—
Q. That is, I mean you have been in the city of Waukegan; you have not been out of town during this hearing, have you?
A. No, I don't believe I have.
Q. You have not left here at any time, but you have stayed right here?
A. I think so.
Q. And the other officers of Lodge No. 66 have been right here also, is that not right—and by "right here," I mean in the city of Waukegan?
A. No, sir, they haven't. Some of them have been back to Fansteel. They haven't all been right here.
Q. I see. Well, they would still have been in Waukegan, would they not, because that is—
A. Well, that is North Chicago.
Q. North Chicago, yes.
A. Yes.
Q. That adjoins Waukegan immediately on the south, does its not?
A. Yes, sir.
Q. But you and the president of the organization, Mr. Kondrath, have attended the hearings here constantly, and
2699 have testified on many occasions, or at least on several occasions, have you not?
A. Yes, sir.
Q. All right. And all of those records were under your control or the control of Mr. Kondrath, or of some of the other officers, and are under that control; that is right, is it not?
A. Yes, sir.
Q. Now, it is a fact, is it not, that the—Oh, pardon me. I will withdraw that.
By the way, after these members joined your organization, did you vote on them in the lodge?

A. No.
Q. You did not?
A. No.
Q. Did you swear them in, in some way?
A. We have asked at different meetings any member that had not taken the obligation, to come forth and take the obligation.
Q. So that there were some sworn in, you think, were there?
A. Oh, yes, I would say that there was quite a few sworn in.
Q. Quite a few.
A. Yes.
Q. But there were some who were not?
A. Well, I couldn't testify to that.
2700 Q. Well, is it possible that some were not? As Mr. Kondrath said, he remembered one.
A. Well, anything is possible—
Q. All right.
A. —if you don't have an actual record of it.
Q. Did you keep a record?
A. No, sir.
Q. Of those who were sworn in?
A. No, sir.
Q. Well, now, let us get back again—
A. The only record that was kept—
Q. Go ahead.
A. (Continuing.) —was at the meetings; they were asked, and they would be recorded in the minutes of the meeting; they were asked to come forth and take the obligation.
Q. All right. Now, let us start in at the beginning. When you solicited memberships, you got some kind of a card from them, did you not?
A. Got some kind of card from them?
Q. Yes; if a man decided to join—
A. We would hand them a card, if we solicited them.
Q. You would hand them a card.
A. Yes.
Q. And get a signature.
A. Yes, sir.
2701 Q. Now, some of those are not dated; is that correct?
A. A few.
Q. A good many are not dated, are they?
A. I wouldn't say a good many.

Q. Well, are there some?
A. Some, yes.
Q. All right. Let us take the case, for instance, of—let us take the top one that you have here; Mabel Carlseen.
Mr. Swiren: Carlseen.
The Witness: Yes.
Q. (By Mr. Block.) This is one of the cards.
A. Yes.
Q. Numbered 118—I guess it is. Now, that card is not dated, is it?
A. No, sir.
Q. Was there anything collected from this woman at the time that she signed this card?
A. I couldn't say that.
Q. Very well. Was she voted on by your lodge, on the question of whether or not she would be received as a member?
A. I don't believe she was.
Q. Did she attend the meeting?
A. Yes, I believe she did attend the meeting.
Q. Was she sworn in?
A. I wasn't present at that particular meeting, I
2702 don't believe.
Q. All right. If you do not know, Carl, just say that you do not know. We want to shorten it up if we can.
A. I just wanted to explain to you that I wasn't at the meeting.
Q. All right. You were not at the meeting.
A. No.
Q. So you do not know.
A. I wasn't there.
Q. Very well. And is that also true of any of the other cards which are not dated, that you do not know exactly whether they paid anything or not, or whether they were sworn in, whether they attended the meeting?
A. Well, you would have to go back and find out when there was exemptions for new members coming in, and check it all over.
Q. All right.
A. There was certain months—
Q. Go ahead.
A. (Continuing)—up until November, I think it was, when anybody that signed a card paid one dollar for initiation fee.
Q. Yes. All right.
A. I think that was up until November 1st.

Q. Well, how would you go about to determine when
2703 Mabel Carlseen, the lady we have been talking about, joined the organization?

A. There was four cards given to me—or, rather, there was four names given to me.

Q. By whom?

A. By some member of the lodge.

Q. Where?

A. I believe at that meeting when I wasn't there—

Q. I say, where was it; on the street?

A. No, sir, it wasn't on the street; it was down in the office of the Steel Workers Organization Committee.

Q. When was it?

A. Well, now, I couldn't tell you the exact date, when that was given to me. It was a long time ago.

Q. How did they give you the names?

A. Well, a record was given to me on new members coming in.

Q. How did they give it to you; did they just hand you a memorandum?

A. Yes, they gave me the names.

Q. All right. And that was somebody whose name you do not remember; is that right?

A. Not at the present time.

Q. And you do not know when it was?

A. Oh, I know when she signed the card, yes.

Q. No. I say, you do not know when it was that
2704 this report was made to you?

A. No, I couldn't give you the exact date when it was, now, no.

Q. No. And so you are arriving at the date, in the case of Mabel Carlseen, by what somebody told you; is that right?

A. Well, if you will check back, I will give you the names of the four girls, and you have—or I have—or, rather, I believe you have the cards there. Those cards run in rotation, you understand.

A. Yes.

A. It was on the 21st of August; and those four names were given me at the same time.

Q. I see.

A. And I was told by other members that those girls were present at the meeting.

Q. I see.

A. And signed the cards.
Q. That is how you came to this conclusion—
A. Yes.
Q. —that is right, is it?
A. Yes, sir.
Q. And you kept no list of membership,—other than those cards, did you?
A. At that time the cards were not put out—
Q. No, I am not speaking about the cards, now. Did
2705 you keep any record, or any list of membership—
A. Yes.
Q. The members—
A. Yes.
Q. —who composed your organization?
A. I did.
Q. You did.
A. Yes, sir.
Q. Where is that record?
A. Well, that was just a cheap composition book, and it has been used for a scratch pad, and everything else.
Q. Well, some great masterpieces have been written in cheap books, on ordinary paper, Mr. Swanson. Now, where is that book? That is what I want to know.
A. That book is in my possession, what is left of it.
Q. How far do you live from this building, where this hearing is now being conducted?
A. Oh, not so very far.
Q. Well, I mean just roughly, for the sake of the record; a mile, two miles, three miles, or what?
A. Oh, about a mile and a half I would say.
Q. All right. And when you testified here today you did not have that book before you, did you?
A. No.
Q. That is right, is it not?
2706 A. No, I didn't.
Q. Now, you were asked by Mr. Walsh on your direct examination as to the date when certain members joined your organization.
A. Yes.
Q. You responded that in the case of H. Bond, for instance, he joined in July, 1936.
A. Yes, sir.
Q. Where did you get that information from, or where did you get that information?

A. By one of the small dues cards that I had.
Q. I see.
A. And also by checking up a list that showed some of the first members to sign up.
Q. Where is that list?
A. Why, that is in my possession, I believe.
Q. It is not here?
A. No, sir.
Q. You have never brought it here?
A. No, sir.
Q. All right. In other words, Howard Bond—or Henry Bond—is that his first name?
A. I believe it is Howard.
Q. The card of Howard Bond, as you believe it to be, is not dated?
2707 No.
Q. He was not voted on?
A. There was no members voted on.
Q. No members were voted on?
A. No.
Q. All right. Now, let us see. You have said that there were no members voted on, and there were some from whom one dollar was collected, and there were others who paid no dues; is that right so far?
A. Well, as I said before, there was certain periods of exemption.
Q. Well, I say, whatever the reason was, there were certain members that did not pay dues—
A. Yes.
Q. —during certain periods; now, is that right?
A. Yes, sir.
Q. Some of them never paid any at all?
A. I wouldn't say that, no.
Q. Showing you this card of Elsie Herman, I will ask you to state whether she paid any dues?
A. I couldn't say whether she paid any initiation fee or not.
Q. What does that card show as to whether or not she did? It is your card. You said you took the information—
A. I said, the dues card.
2708 Q. Well, what does that show? Did she pay any dues?
A. Whether she paid any initiation fee or not, I couldn't tell you.

Q. I am asking you about dues, now.
A. I explained to you that there was an exemption—
Q. Yes.
A. —a period of exemption in there.
Q. All right.
A. When there was no dues.
Q. I am not asking you now about any exemptions, Mr. Swanson. The point I am trying to find out about it, did she pay any; not why she did not?
A. Whether she paid any initiation fee or not, I don't know.
Q. No. Did she pay any dues?
A. No, sir.
Q. All right. Now, how about Eric Lindberg; did he pay any initiation fee, first?
A. I couldn't tell you that, whether he did or not.
Q. Did he pay many dues?
A. No, sir.
Q. How about the next one—well, let me read them off to you. This is No. 2976. I will give you the numbers.
A. Lydia Jorski; no, she never paid any dues either. If there is nothing marked down below in these spaces
2709 here, there is no dues paid. That may save you some time.
Q. I understand that, but you have not identified these yet, and we want to get them into the record, if we can.
A. Oh, surely.
Q. Now, how about No. 2858, W. Magness? That man paid something, did he not?
A. Yes, sir, he paid up until October—he paid for August, September and October.
Q. Did he pay any initiation fee?
A. He apparently did.
Q. All right.
A. Because for those months they had to pay an initiation fee.
Q. All right. Now, card Number 2936: Will you read the name on that, please?
A. Mary Morklund; no dues paid. I couldn't say whether she paid any initiation fee or not.
Q. Card number 2952. Just read the name on that card, and give us the same information, please?
A. David Nostell. He paid one dollar in November for

dues. Whether he paid any initiation fee or not I couldn't tell you.

Q. In November?

A. Yes, sir.

Q. 1936?

A. He paid one dollar dues in December.

2710 Q. December. did you say?

A. Yes, sir.

Q. 1936?

A. Yes, sir.

Q. All right. Number 3060.

A. Orlin Swanson. In February he was initiated—or signed up. I don't know whether he paid any dues or initiation fee or not.

Q. Does that record there, the card, show that he paid any dues?

A. No, sir, no dues.

Q. It does not?

A. No, sir.

Q. All right, take the next one, J. Petraitis, number—what is the number of that card?

A. 2863.

Q. All right.

A. He came in in July, so he paid an initiation fee. He paid for August, September, October and November, and February; that is August, September, October and November, 1936, and February of 1937.

Q. How about Victor Oliver, 2991?

A. In February—no, there was no dues paid. I don't know about the initiation fee.

2711 Q. By the way, does that card show on what date Oliver joined your organization?

A. No, sir. It just shows that he had joined during the month of February.

Q. But you are counting him in, of course, in the list of your membership, are you not?

A. Oh, surely.

Q. Now, here is card No. 2949. This is the one you talked about before, is it not?

A. Alma Herman. She paid no dues. She came in in November, during the period of exemption. That is 2949.

Q. How, about 2996?

A. LaVerne Salo; in January; initiated, and no dues paid.

Q. 2857?
A. That is Murray Pratt. He paid one dollar for September.
Q. Now—
A. Do you want the rest of these?
Q. Well, you may read them in, if you want to. Some of them paid; I have given you some who did.
A. O. K.
Q. You can read those in if you want to, Mr. Swanson. I have no objection. I only want to know about those that did not pay.
A. All right.
2712 Q. And you can read the others in, if you want to do so.
A. Go ahead.
Q. Now, what would you say, Mr. Swanson, as to whether or not there are a large number of members who never paid any dues?
A. Well, that is only a very small percentage of the cards there.
Q. Well, there would be more—if you produced more cards, there would be others; it would appear that others had not paid anything, would it not?
A. Oh, I wouldn't say that, no.
Q. Well, have you got those cards?
A. Not here.
Q. Not here.
A. No.
Q. But you have got them available?
A. Oh, yes.
Q. That is right, is it?
A. Oh, yes.
Q. Then, I suppose from time to time the situation in your membership has changed; that is, some people have left the employ of the company?
A. Well, there wasn't many, I don't believe.
Q. Well,—
A. I believe there was one.
2713 Q. I do not care if there was one or one hundred, I say, that did take place, did it not, that there would be a change by reason of the fact that some employe either was discharged, or voluntarily left the employ of the Fansteel Company? That is true, is it not?

A. Well, it was more just the new help coming in, I believe.

Q. Well, all right. I am talking about your members. Some of them left, but I am not asking why they left.

A. Well—

Q. (Continuing.) At any rate, they severed their connection with the firm, did they not?

A. To the best of my knowledge, there was two members that left,—that is, one member died—

Q. I am not asking as to the number now, Mr. Swanson. I am asking you whether there were such cases.

A. Two, I believe.

Q. All right. What did you do with them, in your records?

A. Notice was sent in to headquarters.

Q. I see.

A. At Pittsburgh.

Q. But they are included in your list of membership, are they not?

A. Up until September 10th.

Q. September 10th?

2714 A. Yes, sir, and if they were not employed at the time of February 17th, why, I didn't specify them.

Q. You did not specify them?

A. No.

Q. Well, where did you do all that,—I mean, your specifying or failure to specify? Where did you do that?

A. Well, in my testimony here, just like now

Q. Oh, I see. You are just doing that from memory, you mean?

A. No; I counted the cards.

Q. And you have consulted your other records to determine that?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. Was Charles Ambrose a member of your organization at any time?

A. I believe he was.

Q. Do you know whether he was or not?

A. I believe he signed an application card, showing the indication that he wished to be a member.

Q. All right. But as you said here now, Mr. Swanson, you cannot say definitely that he was or was not, can you?

A. Well, just from memory, I would say that he was a member, yes, sir.

2715 Q. Well, but I mean, you were just expressing some doubt about it, were you not?

A. Yes.

Q. In your answer?

A. I couldn't say offhand.

Q. You cannot say offhand?

A. No.

Q. But you could readily determine that if you consulted your records, could you not?

A. Yes, sir.

Q. Yes. And you could tell when he joined, and when his connection with your organization ceased, could you not?

A. Well, that is a kind of hard question to answer.

Q. Well, I will split it up. Maybe I made it a little too complicated. I will split it up.

A. All right.

Q. If you had your records, you could tell when he joined your organization, could you not?

A. If I had records I could tell when he joined the organization, yes, sir.

Q. And if you had your records, you could tell how long he remained a member, could you not?

A. No, I couldn't do that so easily right now.

Q. Well, now, you could tell—if he left the employ of the company, you could tell that, could you not? By rea-

2716 son of the fact that he was no longer employed at Fansteel, he would no longer be a member of your organization, would that not be true?

A. Yes, sir.

Q. Well, you could tell that from your records, could you not?

A. I believe I could.

Q. You believe you could.

A. Yes, sir.

Q. And that would be true as to the date when that occurred, would it not?

A. No. Sometimes I was notified of a man not working, or something like that,—or quitting; and it might be that the exact date was not given.

Q. I see. All right. Frank Lodesky; when did he join the organization?

A. July.

Q. July what; 1936?
A. Yes, sir.
Q. What do your records show in connection with Frank Lodesky?
A. Well, I had his card marked at the time, "Ceased", and since that time he hasn't worked any, and I sent his card away, so he is off, in my record, as far as these cards are concerned. However, I still have his original applica-
2717 tion card.
Q. What record is he off of, then.
A. He is out of the application cards; these here dues cards, membership cards.
Q. I see.
A. And he should be off of the records of the S. W. O. C. You see they send out buttons and then send out membership cards to the members in good standing; so he should be taken off of that record also.
Q. Well, those are some more records, are they not that you are referring to now? Those are some more records?
A. Yes.
Q. Who has those records?
A. That I don't know. I believe that they are in charge of Mr. McDonald. I don't know, though; I wouldn't say for sure.
Q. Who is he?
A. He is treasurer of the organization, that is, the Amalgamated Association—or whatever it is—with headquarters in Pittsburgh.
Q. All right. What have you got on Russell Pester?
A. Russell Pester?
Q. Yes.
A. I couldn't tell you right now about him.
Q. How about Victor Oliver? What have you on him?
2718 A. Well, Victor Oliver, the last I heard, he was going to California, I believe. He was working back at Fansteel, and then he was going to leave for California.
Q. When did he join your organization?
A. Oh, I believe that was in February, but I wouldn't be sure, exactly.
Q. In the month of February, 1937?
A. I think so.
Q. When—
A. I wouldn't say for sure, now.
Q. When in February?

A. I couldn't tell you just offhand now.
Q. What have you on Fred Mesec?
A. Fred Mesec joined in July of 1936, and he is waiting to be called back to work, I believe,—or was at the time.
Q. When did you say he joined?
A. July, I believe.
Q. You believe.
A. Yes, sir.
Q. Do you know when he was laid off?
A. I believe he was laid off in the last part of July, or August; I wouldn't say for sure, now.
Q. Of 1936?
A. Yes, sir.
Q. Now—

2719 The Witness: Say, your Honor, could I have the reporter read back Mr. Block's last question to me?
Trial Examiner Dudley: The last question?
The Witness: Yes.
Trial Examiner Dudley: Certainly. Read it, please, Mr. Reporter.
(The question was read.)
A. Well, now, I don't believe—I understood he was laid off. That is, as far as being laid off was concerned, there was just no work at the time, and he was to be called back later.
Q. (By Mr. Block.) Now, Mr. Swanson, I want to ask you again; the answers which you have given to the questions here concerning your membership, or concerning the membership in your lodge, are based on what you have told me here today; that is, partially on records which you have got at home; partially on some computations which you made, and partially on the card which you have before you here.
Now, is that correct?
A. Well, the basis of my testimony is upon these membership cards, and these cards here; that is the basis of my testimony here.
Q. Now, did you have a book for your minutes as recording—or, what were you; financial secretary?
A. Yes, sir.

2720 Q. Did you have anything to do with keeping the minutes of the proceedings—
A. No.
Q. —which took place in the lodge?
A. No, sir.

Q. Who did?
A. Ed. Ruck.
Q. Ed. Ruck.
A. Yes, sir.
Q. Who is occupying that position at the present time?
A. Why, I don't believe that there is anybody. That is, Ed. Ruck is still recording secretary, but due to the condition of things, I don't believe there is anybody acting in that capacity right at the present time, because we haven't had any meetings lately.
Q. Did Ed. Ruck turn those records over to you?
A. No, I don't think he did.
Q. Who has those records?
A. Why, I have those records right now.
Q. Well, did you not get them from Ed. Ruck?
A. No, sir.
Q. You got them from somebody else?
A. Yes, sir.
Q. But you have those records?
A. Yes, sir.
2721 Q. And those records show who was sworn in—
A. No.
Q. —as members?
A. No, sir.
Q. They do not?
A. No, sir. They don't show—what do you mean when you say "Sworn in"? Do you mean the officers?
Q. No, no; the members.
A. Oh, no. That doesn't show.
Q. It does not show that?
A. Oh, no.
Q. Do those records show who was selected from time to time to be members of your organization?
A. No.
Q. Or who were accepted as members of your organization?
A. No, sir.
Q. Well, am I mistaken about this? I thought that Mr. Kondrath said that the secretary kept a record of that, of the members who were sworn in, in groups, in the different meetings. Mr. Swiren asked him about the first meeting, and he said at the first meeting there was a large number, and he named some of them, and that at the second meeting there were some more.

A. Yes.

Q. And he named them. Then, he was asked, "Well,
2722 was there a record kept of that?"

A. Well—

Q. And he said—

A. I think he said, he thought there was.

Q. Now?

A. Didn't he say that he thought there was.

Q. I do not know. What is your own notion about it?

A. That is what I thought he said.

Q. Is there a record of that?

A. There are records of the meeting, but not of the actual dates of each individual who was sworn in.

Q. All right. Now, there is just one other question that I want to ask you, Mr. Swanson, and that is this; have you any by-laws?

A. I believe that was explained here—

Q. No, no. Just answer my question, please. Do you have any by-laws?

A. Well—

Q. Has your organization, Lodge 66, any by-laws?

A. (No answer.)

Q. That is a simple question to answer, is it not, Mr. Swanson? Has your Lodge 66 any by-laws?

A. Well, now, I will have to call on my counsel, to answer that question.

Q. Well—

2723 A. I can't answer that question.

Q. You have been the secretary, have you not?

A. Oh, yes—financial secretary.

Q. And you have belonged to the lodge for a long time?

A. Since July, 1936.

Q. And yet you do not know whether Lodge 66 has a set of by-laws or not?

A. I can't answer that question.

Q. All right. Very well. Now, have you any rules or regulations concerning the qualifications of members?

A. The accepted rules, yes.

Q. What are they?

A. Well—

Q. And where are those rules?

A. Why, I don't know whether it states it on the membership card, or not.

Q. Oh, no; I know that; I have already asked you about

that. I am not talking now about the cards, but other than the cards.

A. Well, you will have to have that explained to you by counsel.

Q. All right.

A. I couldn't explain it to you in full detail.

Q. That is your best answer, is it?

A. Yes, sir, it is. It is really too complicated for me to try to answer.

2724 Q. Have you a constitution?

A. How?

Q. Have you a constitution?

A. We are operating under a permit, I believe, from the Amalgamated Association.

Q. I see.

A. Through the Steel Workers Organizing Committee.

Q. All right.

A. So in that way we have, but we are not using it to the fullest extent. As I said, we are just operating under a permit.

Q. Has Lodge 66 a constitution of any kind?

A. As I have just told you, we are operating with a permit, and using their constitution to a certain extent.

Q. Yes. Have you since the organization of the local, adopted any set of rules, by-laws, a constitution, or any other regulations which govern the body in its meetings, or in soliciting memberships or in any of its activities?

A. Not by the lodge itself.

Q. All right.

A. We have not.

Q. Very well. Then, when you solicit a member, that is not governed by any rule, is it?

A. Yes.

Q. By what rule?

2725 A. Well, by the rule that is set down through the Steel Workers Organizing Committee.

Q. Where is that rule?

A. Well, I couldn't tell you where it is.

Q. You cannot say?

A. No.

Q. Then, when you accept a member into your lodge, you keep no record of it, except this membership card, that is right, is it not?

A. Well, they have this membership card here, and then

the card—the application card that goes into headquarters; and they make a record of it there; and it is supposed to be returned back, as I understand it.

Q. That is still the card, is it not?

A. Yes, sir.

Q. Then, that is all you have?

A. Yes.

Q. That card?

A. Yes.

Q. Except for some private records that you have yourself?

A. Well—

Q. That is right, is it not?

A. Well, there is—well—

Q. Well, the record shows. Now, who determines the eligibility of members?

2726 A. The members themselves.

Q. The members themselves?

A. Yes, sir.

Q. Who determined who properly—who determined what members properly belonged to the organization on February the 17th, 1937?

A. Well—

Q. Who determined that?

A. Why, any organizer or member that signed up another member, he determined that by accepting their signature on the card.

Q. I see.

A. As being eligible and qualified.

Q. And, of course, that is not limited to one man.

A. To the members.

Q. I say, that is not limited—

A. Oh, no.

Q. —to one organizer?

A. No.

Q. Or one member?

A. No.

Q. In other words, one member can go around and sign up another member?

A. Yes, sir.

Q. Or any organizer could go around and sign up

2727 any number of members?

A. That are eligible.

Q. Yes.
A. That is right.
Q. And he determines himself whether that man whom he is signing up, is eligible?
A. He has a certain rule, and then he determines himself whether that man comes under that rule.
Q. All right. Now, about that rule: do you have a copy of it?
A. No, sir.
Q. Have you ever seen a copy of it?
A. Well, I couldn't recall just now whether I have or not.
Q. Do you know whether there is one?
A. I couldn't say whether there is or not.
Q. In the dispute now,—I think I have already asked you this question, and if I have, you will pardon me for repeating it, but just to make sure, it is true that practically every member from time to time was in the habit of going out and soliciting other members?
A. Well, I wouldn't say that.
Q. Well, no, not every member, but, say, a good many of them? That is true, is it not?
A. Well, they would ask their friends, and relatives 2728 and so forth.
Q. And they were governed by the rule you have referred to, as they may have understood it?
A. Yes, sir.
Q. That is right, is it?
A. Yes, sir.
Q. And they were not guided by any written rule at all, of any kind, were they?
A. Well, I wouldn't say whether it was a written rule or not.
Q. In any of the records which you have at home here, or elsewhere any place at all, is there a written rule which defines the eligibility of the members of Lodge 66?
A. I wouldn't say that, no. There might be. We have got records—like I told you before, we are just working under a permit, and we had no permanent records, books, or anything else.
Q. Not at that time, but I mean, today?
A. There are records now that might show that.
Q. There are records now that might show that, you say?
A. Yes, sir. I haven't gone through them.
Q. What would they be?

A. Well—

Q. What would those records be?

A. That I couldn't tell you, because, as I say, I
2729 haven't gone through them.

Q. Where are they?

A. They are out at 1416 Lloyd Avenue, Waukegan, Illinois.

Q. I see. All right. And what are the records where we would find such information, or which would contain such information?

A. As to the conditions that a man would be eligible to membership under—

Q. No, no, your rule, by which the eligibility of members is determined, or where the eligibility of members is defined.

A. Pardon me, Mr. Block, but did you ask me a question?

Q. I thought I did.

A. Well, I am sorry. I didn't get it.

Trial Examiner Dudley: Read the question, please.

(The question was read.)

A. I couldn't say for sure whether it is in there or not, but I said, it might be in there. I have got certain books that explain the rules, and setups of different things, but whether it is in there or not, I couldn't say offhand.

Q. Who made up those rules?

A. I couldn't say.

Q. Whose rules are they? Who are the people who made up those rules?

A. I couldn't tell you that.

2730 Q. You cannot tell us that?

A. No, sir.

Q. Are they printed?

A. I believe that they are in pamphlet form.

Q. In pamphlet form.

A. Yes, sir.

Q. Well, what are they called? Do they have any designation of any kind?

A. Oh, yes.

Q. What?

A. Well, there is a heading to it, but I couldn't tell you offhand what the heading is, now.

Q. Well, what does it say?

A. I couldn't tell you now.

Q. What do the rules provide?

A. I told you, I haven't gone through them.

Q. I see.
A. I am very sorry.
Q. All right. That is very fine. And they are not here?
A. No.
Q. And you cannot tell us what they say?
A. No, sir. I haven't gone through them. I tell you, it is all new stuff, and I haven't gone through it.
Q. Do you have any rules as to when a member of your organization ceases to be a member?
2731 A. Why—
Q. (Continuing.) That is, under what conditions he may terminate his connections with your organization?
A. Well, not a general rule, that is, in writing, or set up by the organization, no, sir. We understood as individuals that there were certain limitations, and so forth.
Q. The individuals made that up as they went along, did they?
A. Well, it was a general understanding of the organization that we wanted.
Q. So that a man under that arrangement might remain a member of your organization so long as you men between yourselves agreed that his situation—was the same; is that about it?
A. If his situation was the same?
Q. Yes.
A. If it didn't change.
Q. In other words, if you men decided that way, he was still a member?
A. If it was proven that a situation had not changed.
Q. Proven to whom?
A. To the membership.
Q. To the membership?
A. Yes, sir.
Q. Yes, but you have stated that you were not going
2732 by any written rule—
A. No.
Q. Or any definition at all?
A. We were just under a temporary setup.
Q. Yes.
A. And that had not been decided.
Q. So regardless of a man's wishes and without consulting him, that was the situation, was it?
A. Oh, I wouldn't say that.
Q. You would not say that?

A. No, sir. He would be given a fair opportunity.

Q. All right. Now, Mr. Swanson, that is what we want to know. Now, there is just one other question:

Will you give us a list of your membership today? Who are your members today?

A. Well—

Q. You have told us about the members, and when they joined in 1936. Now, who are your members today.

Mr. Walsh: That is objected to, if the Examiner please, as not being a matter that is relevant to the inquiry here.

Mr. Block: Oh, this goes to the very crux of the question that is involved here, Mr. Examiner. They are claiming a majority.

Trial Examiner Dudley: Let this be off the record
2733 a moment, Mr. Reporter.

(Discussion outside the record.)

Mr. Swiren: There is also this matter to consider, if the Examiner please, that if the Board decides adversely to us, it will have to decide what the order is going to be.

Trial Examiner Dudley: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Block: If the witness does not know, why, of course, he may just say so.

A. Well, to my knowledge, our members today are still members; that is, any man who has signed one of these cards and who has been accepted, is still a member.

Q. (By Mr. Block.) I see. And that is the way—

A. To my knowledge.

Q. —that you are governed, and the way you have governed your membership ever since your lodge was organized? That is, you determined—

A. This is the basis. (Indicating cards.)

Q. That is the basis.

A. Yes, sir.

Q. And that basis, so that there will be no argument about it, Mr. Swanson—just let me have them again, please.

A. Yes, sir.

Q. That basis is this group of cards which have been
2734 referred to as application cards—

Mr. Swiren: Board's exhibit No. 19.

Q. (By Mr. Block.) Continuing) —Board's exhibit No. 19.

Mr. Walsh: 18.

Mr. Swiren: No, 19.
Mr. Block: Well, if you gentlemen will get together, I will finish the question.
Mr. Swiren: It is exhibit 19, is it not?
Mr. Walsh: The whole group consists of Board's exhibits Nos. 18, 19 and 20.
Mr. Block: 18, 19 and 20?
Mr. Walsh: Yes.
Q. (By Mr. Block.) (Continuing) That is what you are governed by entirely; is that correct?
A. That is the basis of proving our membership, yes, sir.
Q. And on February the 17th, 1937, you followed the same rule, in making that determination, did you?
A. That was the accepted rule, yes, sir.
Q. The accepted rule.
A. Right.
Q. But not in writing?
A. How?
Q. Not in writing?
A. Well—
Q. There was no written rule?
2735 A. How?
Q. There was no written rule?
A. You mean that the lodge—
Q. Had adopted—
A. A rule?
Q. Yes.
A. Why, yes, this is an accepted—that is accepted by the lodge, as to membership, naturally.
Q. Well, now, you keep referring back to the cards.
A. Yes.
Q. But I am speaking of things other than cards.
A. You said, "a rule."
Q. The cards are in evidence.
A. You said "a rule."
Q. A rule, yes.
A. Well, that is an accepted rule, by the lodge.
Q. That is all?
A. How?
Q. Nothing else?
A. No, nothing else, so far as I know.
Mr. Block: Mr. Reporter, will you mark this card respondent's exhibit 42 for identification, please?
(The document referred to was marked Respondent's Exhibit No. 42 for identification.)

Q. (By Mr. Block.) Mr. Swanson, showing you what
2736 has just been marked by the reporter Respondent's exhibit No. 42 for identification: is that one of the pink cards which you identified here before?

A. Yes, sir.

Q. Showing the wages—or rather, the dues, I mean, paid by the various members.

A. Yes, sir.

Q. That is the type of card that was involved in each of the cases you were asked about particularly; is that right?

A. Yes, sir.

Q. The same type of card?

A. Well, there is another card that is used at this time.

Q. No, no.

A. (Continuing) That was not used at that time.

Q. No. the other cards I asked you about—

A. I don't mean—

Trial Examiner Dudley: One at a time.

Q. (By Mr. Block.) I asked you about a dozen cards, or more, and I want to identify this one now.

A. Oh, yes; that is the same pink card.

Q. They are all of the same type of card, is that correct?

A. Yes, sir.

Mr. Block: Now, if the Examiner please, we would like to leave this here if we may.

Trial Examiner Dudley: Do you want to introduce it?

2737 Mr. Block: Well—

Mr. Swiren: We will want to introduce it, but I do not think we want to introduce it in their case. We will wait until they get through.

Mr. Block: We will just merely have it identified for the time being, and leave it with the reporter.

That is all I have with the witness.

Trial Examiner Dudley: If you want to introduce it at this time, you may do so. You have got most of them read into evidence anyway, I guess.

Mr. Block: Yes.

Mr. Swiren: We just want one sample of them here.

Mr. Block: They have been mostly read in.

Mr. Walsh: Has counsel finished with the witness?

Mr. Block: Yes.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you very much.

(Witness excused.)

Mr. Keele: Off the record.

Trial Examiner Dudley: Off the record, Mr. Reporter.

(There was a discussion off the record.)

Trial Examiner Dudley: We will recess at this time until 2:00 o'clock this afternoon.

(Thereupon, at 11:45 o'clock a.m., a recess was taken
2738 until 2:00 o'clock p. m.)

After Recess.

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Dudley: I will call the hearing to order.

Mr. Walsh: Mr. Yaeger.

FRED YAEGER, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, and further testified as follows:

Direct Examination.

Q. (By Mr. Walsh.) State your full name.

A. Fred Yaeger.

Q. Mr. Yaeger, you have previously been sworn, and have testified in this case, have you not?

A. Yes, sir.

Q. You were a steamfitter at Fansteel?

A. Yes, sir.

Q. How long did you work there?

A. About 14 years.

Q. I believe you occupied building No. 5 during the time the men were in the plant, did you?

A. Yes, sir.

Q. From February the 17th to February the 26th, 1937?

A. Yes, sir.

2739 Q. I will ask you whether or not there was heat on on in the buildings during that time?

A. Why, after we had the first gas attack, they shut the steam off, and then it was off until I guess, about Sunday evening, and then they turned it on for about an hour or so at a time; and we had quite a bit of trouble in keeping the steam pipes from freezing, and keeping the water pipes from

freezing. Some of the fellows was helping me drain some of the system when the steam was off, to keep it from freezing up and doing any damage.

Q. Well, I will ask you if one night it was necessary, for you to drain the steam lines?

A. Yes, sir. One night, I think it was about Wednesday night, they had the steam off for some little while, and a 2-inch water main broke about 3:00 o'clock in the morning.

Q. What was the occasion of its breaking?

A. Well, because the steam was shut off for two or three hours, and they had not turned it back on. The way those fellows would do, they would turn it on it our building for one hour, and then turn it off, and then turn it on over in the other building; and for some reason or other somebody slipped up on it that evening, and it was off from about midnight, I guess it was until after that steam pipe—or rather, after that water main broke.

Q. Did it break by reason of being frozen?

2740 A. Yes, sir; the pipe split.

Q. And as the result of that breakage of the water main, some water, I presume drained out?

A. Yes, sir, there was quite a bit of water. It happened to be on the third floor, and at the time I got down in the elevator pit, we had a quite a bit of water down there,—there was always quite a bit of water down there; and I got it shut off, but there was quite a bit of water on the third floor, and it was coming down on the second floor; and we had the machines covered up during the—that is when the windows were broken out; and we got saw dust, and swept up the water, and put saw dust all the way around; and I fixed the pipe, and then the water was turned back again so that nothing else would freeze.

Q. You kept the water taps open, did you?

A. Yes, sir, we kept water taps open so that none of them would freeze up, and we kept everything in as good condition as we possibly could.

Q. After the windows had been broken out—after the first gas attack, and during the first gas attack, when the windows were broken, did you make any repairs to those windows?

A. Yes, sir, we did. The steam was turned on—I think it was on a Sunday; and we went down to building 6, which they have been testifying about here, and they had some lamination in there, and we took some of that up and

2741 used some of that to cover the windows, and also some cardboard, what cardboard we could find; we fitted that in the windows to keep such—to keep as much heat in as we possibly could.

Q. Did you do anything about the machinery at all?

A. Why, yes, sir; right after the first gas attack, a bunch of the fellows went down in the shipping room, and they got some of that oiled paper that they used to ship their products over to France, that kept the sea air out, that was supposed to be waterproof paper, and we used that to cover all of the machinery upstairs with, to keep the rain and snow out, so that the stuff wouldn't get all damaged.

Mr. Walsh: That is all. You may inquire.

Mr. Block: Just one or two questions.

Cross-Examination.

Q. (By Mr. Block.) Mr. Yaeger, these things that you have been speaking about, occurred during the time while you and the other men were occupying these buildings, did they not?

A. Yes, sir.

Q. And these various things that you say you did with reference to the machinery, and the windows were done, of course, without permision of the company, were they not?

A. Yes.

Q. And they were done without consulting any of the officials of the company, were they not?

A. Well, we were holding the buildings in protest 2742 because they wouldn't—

Q. You were holding the buildings.

A. Yes.

Q. And that was done without consulting the officials of the company, of course, was it not?

A. Well, we was—what we were trying to do was not to have any more damage done to the buildings then was necessary.

Q. I am not arguing the matter with you, Mr. Yaeger, I just say, was it done without consulting the officials of the company? Answer yes or no.

A. Yes, sir.

Q. You did not consult Mr. Aitchison?

A. No, sir.

Q. Or Mr. Anselm?

A. No, sir.
Q. Or Luther Henry, or any other official of the company?
A. No, sir.
Q. That is right, is it not?
A. Yes, sir.
Q. In other words, you men congregated there during this period of time, and decided for yourselves what was necessary to do in order to preserve the machinery, and properly protect the building, and you acted accordingly, without any consultation so far as the company was concerned?
A. Yes, sir.
2743 Q. That is the fact, is it not?
A. Yes.
Q. All right. Now, I suppose that many of the things you did in connection with the windows were done largely, if not entirely for the purpose of keeping the building as warm as you could, for your own comfort, were they not?
A. Well, that was one of the reasons.
Q. Yes.
A. You have a sprinkler system—
Q. Well, I say, that was the reason, or one of the reasons?
A. Well, yes.
Q. Yes. No one had suggested your leaving the premises, had they, and going home?
A. Not that I know of.
Q. No. And it was definitely concluded that you were going to remain there, was it not?
A. We were going to stay there until they either recognized the union or—
Q. You were going to remain there.
A. That is what we were figuring on, yes sir.
Q. Yes. Now, when some of those problems arose about the machinery, and other things, did you communicate the matter to the management?
A. I believe we did that night, when the sprinkler system— or when this pipe broke. I believe that we did
2744 send one of the deputy sheriffs over.
Q. I see.
A. To see if it was all right to shut the sprinkler off outside.
Q. You say, you believe you did.
A. Well, I know that we told one of the deputy sheriffs to go over there.
Q. I see.

A. We told him.

Q. But you had at that time, many representatives on the outside, had you not?

A. Oh, I don't believe that there were many down there that evening, no sir.

Q. Well, there were the next morning?

A. I believe there was some.

Q. And the next day?

A. Yes, I guess there was.

Q. There were representatives and members of your lodge there daily and nightly, were there not, at some time or other?

A. I believe that is true.

Q. Yes. And you did not send any of them to the company, did you?

A. Why, I think that some of them did go to the company before they turned the steam on, and tried to—

2745 Q. Do you know anything about that yourself?

A. Well, no, sir, I don't, because I was pretty busy in there keeping the steam—

Q. Well, as far as you know, then, that did not take place, did it?

A. Not so far as I know, no.

Q. All right. And along the same line, that is, with the idea of protecting the property, you also moved certain articles that you found in the building, did you not?

A. Well, no, sir; I don't remember moving any articles.

Q. Well, now, did you not move somethings from one floor to another?

A. Not me.

Q. Not you?

A. No.

Q. I do not mean you personally, of course, but I mean, the men who were in the building.

A. I don't believe they moved anything around, no, sir, unless it was some stuff that was in the way of getting damaged.

Q. I see.

A. (Continuing) During the—or, from the water.

Q. And along the same line, that is, with the idea of protecting the property, you also moved certain articles that you found in the building, did you not?

2746 A. Well, no, sir, I don't remember moving any articles.

Q. Well, now, did not—did you not move some things from one floor to another?

A. Not me.

Q. Not you?

A. No.

Q. When I say "you" I do not mean you personally, of course, but I mean, the men in the building.

A. No, sir, I don't believe they moved anything around, unless it was some stuff that was in the way of getting damaged.

Q. Yes.

A. (Continuing) Through the—from the water, with the water that was coming down. We moved some of the wire out of the Inspection Room.

Q. Which building was that—which building were you in?

A. 5.

Q. How did the acid get upstairs?

A. Why, I believe I heard somebody say—I believe Mr. Osenek said that he saw myself and a few of the men take that up on the elevator.

Q. Well, irrespective of who did it, did some of the men bring that up?

A. I don't remember seeing anybody taking any acid up there, no, sir.

Q. You saw it upstairs yourself, though, did you not?

2747 A. I believe I did.

Q. Where was it normally situated?

A. It was down on the first floor, and also there was some up on the fourth floor.

Q. Well, is it not a fair conclusion, then, that it was brought up during this period by somebody in the building?

A. Why—

Q. (Continuing) From February 17th to February 26th, 1937, by some of the men who were occupying the building.

A. Yes.

Q. Irrespective of who the individual was, or who the individuals may have been?

A. Yes, sir.

Q. Now, that is right, is it not?

A. Yes, sir.

Q. Now, of course, that was not done with the idea of protecting any of the property of the company, was it?

A. I don't know what it was brought up there for.

Q. No. And there was no need for that, for any purpose

of protecting the windows, or the machinery, or the pipes, or anything else, was there?

2748 A. How is that again?

Mr. Block: Read it, please.

(The question was read.)

A. I don't believe so.

Q. (By Mr. Block.) Now, how about the fire extinguisher?

A. I don't know anything about the fire extinguisher.

Q. You do not?

A. No, sir?

Q. Did you see that extinguisher—or those extinguishers, all up stairs?

A. Well, there was one down in the heat-treating building, that is where it has always been in the last number of years; and that other one—I don't know how that got down, on the third floor.

Q. But it did get down there?

A. Yes, sir.

Q. Or it did get up there, rather?

A Well, no, sir; I believe that was originally on the fourth floor.

Q. But it got down to the third floor?

A. I don't know if they carried it down the steps, or what they did. The power was off.

Q. I say but it did get down there?

A. Yes, sir.

Q. Between February the 17th and February the 26th?

2749 A. I think so.

Q. All right. Now, Mr. Yeager, as a matter of fact—I will withdraw that.

How about some other articles? How about some spools, and things?

A. Well—

Q. Were they moved, and gotten together?

A. I believe there was spools on the second floor and the third floor all the time.

Q. Yes?

A. They used them to run the wire off on.

Q. Well, you got some of those together, did you not—that is, I do not mean you personally, but I mean, some of the men in the building had collected some of those together, to use in connection with the attack, had they not?

A. I don't believe they did.

Q. You do not think there were any of those used at all, then?

A. Oh, I know—I saw a number of them. Some were used.

Q. Yes.

A. But I don't think that the fellows collected any of them together, because they were lying right along the benches there, right by the windows.

Q. They were lying along the benches?

A. Yes, sir.

2750 Q. Well, now, of course, so far as the fire extinguishers, the spools, and like articles, and the acid, were concerned, any handling of that property or those articles during that period was not with the view of helping preserve the property or machinery of the company, was it?

A. I suppose it wasn't.

Q. Pardon me. I did not hear. You say you suppose it was, or was not?

A. Was not.

Q. It was not?

A. Was not?

Mr. Block: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You are excused. Thank you.

(Witness excused.)

Mr. Walsh: Clarence Dreyer.

CLARENCE DREYER, recalled as a witness for the National Labor Relations Board, having been previously sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You are Clarence Dreyer?

A. Yes, sir.

Q. You have previously been sworn and testified before in this proceeding?

A. Yes, sir.

2751 Q. Mr. Dreyer, you were one of the men who occupied building number 3 during the period from February the 17th to the 26th, 1937, were you not?

A. Yes, sir.

Q. Will you tell the Trial Examiner what the men in those buildings did in the way of protection to the machinery, during the time that the buildings were occupied?

A. Well, as far as the machinery goes, most of the machinery was on the second floor, and in the tool room. The machinery, a lot of it, was over next to the windows, all the way down the line; and they had these canvas roller shades on the windows, and after the windows were broken out, those shades were all pulled down, and we tried to block them up the best way we could, because there was no way you could nail them down, or anything else; so we laid bars and pieces of pipe or anything else we could get holf of, against them, to keep them down, against the windows, but there wasn't sufficient to keep out the mist, the fog; and the machinery was rusted to a certain extent, but nothing serious.

On the first floor we cleaned up all of the contact assemblies that were there; some of them were half assembled and some of them were all the way assembled; and we cleaned all that stuff up and put it away so that it wouldn't get spilled all over; also the jigs they use in the welding.

We had the same trouble with radiators as they had 2752 in the other building, and I believe we disconnected them altogether and drained the water out of them, and left them off for, I guess, twenty-four hours. Anyway, there was a stretch there when we didn't have no heat; and the sprinkler system also was shut off; but they notified the fire chief; and I think Mr. Nelson was notified about it at the time.

Q. Now, you worked in the cutting department, I believe, for a certain period of time?

A. Yes, sir.

Q. Are you able to tell me what are the common size rods that you cut?

A. Oh, the most—the size we had the most work on was a .149 diameter rod, and I believe a .172 rod; and a .125 rod. That would take in pretty nearly everything; that is, the most work was done on those three sizes.

Q. How many of the .149 rods—or, rather, how many contact disks would you cut from the .149 size rod in a day?

A. How many disks?

Q. Yes.

A. I believe at the time the trouble started, we were cutting around 16,000 disks per day; that is, that might vary 200 either way.

Q. That might vary 200 either way—

A. Yes.

Q. From 16,000?

2753 A. Yes, sir.

Q. And what percentage of waste, of culls, were you getting?

A. Well, our rejects ran about on an average, three per cent.

Q. Were those rejects entirely wasted?

A. No, sir.

Q. How were the rejects used?

A. Well, on the .149 rods, the main work is on breaker-arms, and the rivet that goes with them; and those sizes run next to each other. That is, the breaker-arm size is 35-1000ths up to 39-1000ths, with a 4-1000ths variation.

Q. That is, 35-1000ths up to 39-1000ths of an inch?

A. Yes, sir.

Q. In thickness; is that right?

A. Yes, sir.

Q. That is, the thickness of the disk which you would cut?

A. Yes, sir.

Q. Yes?

A. (Continuing.) And then the rivet, the rivet that goes with the breakarm, that size was 40 to 44.

Q. That is, thousandths of an inch in thickness?

A. Yes, sir.

Q. Yes.

A. For anything that was oversized on the breaker-arm disks, that was a good disk for the rivet that goes with it.

But they were taken away from us, we were not paid 2754 for them, because they weren't the size we were supposed to cut.

Q. I see. In other words, you were deducted for the disks that were rejected, or that varied more than 4-1000ths of an inch; is that right?

A. Yes, sir.

Q. But those disks could be used?

A. Yes.

Q. By some other—or, in another part; is that right?

A. Yes, sir, they could be used in other different sized contacts. Like with a .172 rod, why, that was a real thin disk, and anything that was oversize or under-size on it, they saved them, and remedied the size by the use of a tack, for the variation.

Q. That is, by the thickness or thinness of the tack upon which they set the contact point, is that right?

A. Yes, sir. Outside of that, taking the only waste, the real waste that could not be used for anything, would run—oh, about one-half of one per cent, I guess, or something like that.

Q. So that your actual net waste was about one-half of one per cent, you would say?

A. Yes, sir.

Q. All right. Now, how many disks per day of the .172 rods were cut?

A. Oh, I should say an average of 13,000.

2755 Q. And of the .125, how many were you cutting?

A. Of the .125 rod?

Q. Yes.

A. Around 18,000.

Q. Now, how many wheels would you use per thousand, on the .149 rods, or, rather, how many disks could you cut with one wheel, using a .149 rod?

A. Well, at that rate of speed we would get around 450 cuts off, with one wheel.

Q. 450 disks per wheel?

A. Yes, sir.

Q. Cutting 18,000 per day.

A. No.

Q. Of the .149 disks?

A. 16,000.

Q. Well, 16,000.

A. Yes, sir.

Q. How many disks were you cutting per wheel, of the .172 rods, when you were cutting 13,000 per day?

A. About 300, on the average.

Q. About 300.

A. Yes, sir.

Q. Now, I do not recall what you said the number of disks was that you were cutting of the .125 rods.

A. 18,000.

2756 Q. 18,000.

A. Yes, sir.

Q. And in cutting 18,000 disks per day, the diameter of .125, how many disks did you get per wheel?

A. Oh, I should say about 650.

Q. Now, when you increase the number of disks cut per day, what effect does that have on the cutting wheels?

A. It wears the wheels down quicker. I have worked on

that job long enough to know that in the past, when die production was stepped up, there was changes in the machines, to make step-up in production.

Q. Yes.

A. But last June they stepped up production without making any changes in the machines; and we pushed those machines faster than they should have been run.

Q. And what effect did that have on the cutting wheel?

A. Well, if you don't let your cutting wheel go its natural way, or, in other words, if you force it, it grinds it off quicker, and cuts it down quicker.

Q. In other words, it burns the wheel, is that right?

A. Yes, sir.

Q. Instead of cutting the rod?

A. Yes, sir.

Mr. Walsh: You may inquire.

Cross-Examination.

2757 Q. (By Mr. Block.) Mr. Dreyer, you have worked at Fansteel for quite some years, have you not?

A. Seventeen.

Q. How long?

A. Seventeen years.

Q. You always had a foreman there, I suppose, did you not?

A. We did.

Q. It was customary for the foreman to give instructions as to how, when and in what manner the work should be done? That is correct, is it not?

A. Yes.

Q. It was also the custom and the understanding that his orders—or their orders, the foreman's orders, were to be followed?

A. Always.

Q. They were the men who were responsible to the management, were they not?

A. Yes, sir.

Q. For the results obtained.

A. Yes.

Q. And you understood that?

A. Yes, sir.

Q. And there was no question but what the other men in your department understood that, was there?

A. I think they did.
2758 Q. During the years you were employed there?
A. Yes, sir.
Q. Therefore, that situation was the same in February, 1937, as it had been prior to that time, was it not?
A. Well, no, I don't think so.
Q. How?
A. I don't think it was.
Q. You do not think it was?
A. No.
Q. I see. If a foreman had his own opinion as to the manner in which a certain piece of work shoud be done, and some employe in that department under that particular foreman, had a different opinion, about that same piece of work, was the opinion of the employe followed, or the opinion of the foreman?
A. In February we were given a job, and they told us to use our own judgment.
Q. To use your own judgment?
A. Yes.
Q. Very well. But when the foreman came up to any man, or anybody in the department, to correct or make suggestions, were they ignored?
A. Well, if they were impractical, why, we would argue about it.
Q. I see. And at the conclusion of the argument,
2759 who was the judge as to which way it would be done?
A. Well, we would try it his way.
Q. You would try his way?
A. Yes, sir.
Q. And you understood that was the perfectly normal practice in the plant, did you not?
A. Yes.
Q. That is true, is it not?
A. Yes.
Q. And if a foreman told any of the men to change the speed of a machine, his word was, shall we say, the law of that department on that matter, was it not?
A. The foreman didn't tell us to change the speed of the machine.
Q. No, but I am asking you, if the foreman did that?
A. If he did?
Q. Yes.
A. We would try it.

Q. Yes.
A. And then if it didn't work, we would tell him.
Q. Well, the understanding was that his orders were to be obeyed, was it not?
A. Yes.
Q. And if it was a mistake, why, then he would be responsible for it, of course.
2760 (No answer.)
Q. Is that not naturally fair?
A. In a way.
Q. You could not run the factory any other way, could you?
A. Well—
Q. I mean, that is the way it always had been operated, was it not?
A. Well, I was trained to do my work in the most efficient way I knew how.
Q. I am not speaking particularly of you, Mr. Dreyer, but I mean, the men generally there. You had quite a few machinists in your department, did you not?
A. Quite a few.
Q. Yes; and the foreman was the boss?
A. Yes, sir.
Q. He gave the orders, did he not?
A. Well—
Q. To the men?
A. Our foreman used to give us a job, and he knew that we would do it the way it should be done.
Q. All right.
A. Without any particular orders.
Q. And if any question arose concerning any of those jobs, why, then the foreman would be the person to decide a dispute or difference of opinion, whatever it might be,
2761 that may have existed with reference to a particular job; is that not true?
A. Naturally.
Q. Yes.
A. If there was any doubt about anything, we would consult the foreman.
Q. Now, by the way, Mr. Dreyer, when you were in these buildings in the period from February the 17th to February the 26th, you were in building number 5, were you not?
A. No. 3.

Q. Building 3?
A. Yes, sir.
Q. Was there some machinery in that building at that time?
A. Yes, sir.
Q. What kind of machinery was it, in the main?
A. Well, it was—on the second floor, there was all of the machinery that a machine shop is usually equipped with. On the first floor was machinery of the company's own design, for use in contacting work.
Q. Special machinery, would you say that was?
A. How?
Q. Special machinery?
A. Yes, sir.
Q. Specially designed?
A. That was machinery that the company had designed itself.
Q. And it was, of course, used for production purposes—
2762 A. Yes.
Q. —when the plant was in operation?
A. Yes.
Q. Was that machinery oiled by anybody during the time you men were in there?
A. Oiled?
Q. Yes.
A. Now, I believe that at one time there was kerosene on some of it.
Q. What?
A. Kerosene.
Q. Kerosene?
A. Yes, sir.
Q. Do you know who did that?
A. No, I don't.
Q. When was it?
A. Well, I can't remember the exact date, but it was the first day of bad weather that we had, after everything started blowing in.
Q. And what kind of oil normally was used, when those machines were oiled, when they were in operation?
A. (No answer.)
Q. By the way, you do not remember which machines those were, do you, that the kerosene was used on?

A. There was one big machine up in the tool room,
2763 I think about twenty feet from the stairway, that I noticed had kerosene on.

Q. How many more machines were there in that building?

A. Oh, I couldn't say how many.

Q. But that is the machine that you think somebody put kerosene on; is that right?

A. Yes, sir.

Q. Now, Mr. Dreyer, you have worked for Fansteel a long time, have you not?

A. Yes, sir.

Q. Is it not a fact that if the moving parts of those machines had been oiled during that time, they would not have rusted—if they had been properly oiled?

A. No, sir. The only places those machines were rusted—

Q. No, no.

A. Well, in the—

Q. I did not ask you anything about where the machines were rusted. I am asking whether it is not a fact, had those machines, or the moving parts of those machines, been oiled properly during that period, they would not have rusted?

A. I don't know that they were rusted, the moving parts.

Q. I am not asking you about that. I am asking you as to what effect the oiling would have had, on the matter of rust?

A. It would have the same effect that the kerosene would have, as far as rust is concerned.

2764 Q. That would be what?

A. To keep it from rusting.

Q. To keep it from rusting.

A. Yes, sir.

Q. Now, you men in the buildings there, had access to both buildings, that is, 3 and 5, did you not?

A. No.

Q. You say, you did not?

A. No—we did, the first day.

Q. I see.

A. But that was all.

Q. Well, were there not some men who left one building and went over to the other building at times?

A. Not after the first day.

Q. Now, those machines were not oiled, were they?

A. I don't know.

Q. Did you see anybody oil them?

A. I never seen nobody oil them, no, sir.
Q. All right. Now, I just want to ask you one more question, Mr. Dreyer, as to those figures that you gave with reference to the number of disks, and so forth, in connection with your work: In giving those figures you are merely quoting from memory, are you not?
A. Well, I know.
Q. You have not checked it, have you?
2765 A. I know that to be a fact.
Q. You mean, you know that is a fact—
A. Yes, sir, I do. I am not guessing. I am sure of it.
Q. You are not guessing at it?
A. No, sir.
Q. How recently have you informed yourself on it, on this matter?
A. Well—
Q. (Continuing) Or is it just from memory of what you were doing, during the time you worked there?
A. Well, I have worked on the job there so long that I should know.
Q. Well, then, that is what you are basing it on, is it, on your memory of what happened during the time you were working there?
A. Yes, sir.
Mr. Block: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You are excused; thank you.
(Witness excused.)
Mr. Walsh: Joe Petraitis.

JOSEPH PETRAITIS, recalled as a witness for the National Labor Relations Board, having been previously sworn, testified further as follows:

Direct Examination.

2766 Q. (By Mr. Walsh.) You are Joe Petraitis?
A. Yes, sir.
Q. You have been previously sworn in this case—
A. Yes, sir.
Q. —and have testified here?
A. Yes, sir.
Q. What was your job at Fansteel?
A. My job?

Q. Yes.
A. It was a new kind of metal—
Q. No, what was your job?
A. Oh.
Q. Were you a machinist?
A. Yes, sir; swaging diemaker.
Q. Swaging diemaker?
A. Yes, sir.
Q. I believe Mr. Groll testified here yesterday that you slowed your machine down and did not run it at the speed at which the machine could be run. Now, I will ask you if you did slow your machine down?
A. No, sir.
Q. Did you slow your machine down at all?
A. No, sir. He never said nothing, and I never slowed up nothing.
Q. Now, at one time were you finishing some 548 steel dies?
2767 A. Yes, sir.
Q. Tell us, did you run your machine fast, or did you run it slow?
A. I run it slow, you can't run it any faster. If you run it faster, it will break the tool, and you can't do nothing with it. That steel, they don't harden that steel. They make it about two and a half inches by about an inch and a half, and an inch and a quarter square, and they put it on the machine, and after you get through, you have got to make a smaller die, on the number 3 machine, and after the number 3 machine you have got to make it about an inch long and about half an inch square; and then you have got to—
Q. I believe you have answered the question. Now, this particular kind of steel, after it has been used for a die, and you get back the used die to refinish or reface, whatever you do with it? Is it harder than it was before?
A. It is as hard as glass, after it has been used. You have got to grind it on a grinder.
Q. So that if you put one of those dies in the machine, and run it fast, it breaks the tool; is that right?
A. Yes, sir, absolutely.
Q. Did you ever see Groll, the foreman, talking to Du Bois?
A. No, I never did in my life.
Q. You never saw him talk to him?
A. No, sir.
2768 Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Mr. Petraitis, how many notches are there on those machines?

A. What?

Q. How many notches are there on those machines?

A. Well—

Q. That is, for speed.

A. One.

Q. Only one notch?

A. Yes, sir.

Q. There are not two notches?

A. No—well, there are two notches, and you can take three, but it isn't good.

Q. In other words—

A. It won't work.

Q. I understand. But the machine has got three notches on it, for three different speeds, has it not?

A. Yes, sir, or maybe four; I don't know.

Q. I see. Did you ever try to use that machine in the second notch?

A. No, sir.

Q. You never tried it, even?

A. Oh, I tried it, yes, sir, but it won't work.

Q. It will not work?

2769 A. No, sir.

Q. In other words, you experimented to find out if it would work in second speed, and you found it would not work in second speed, or in the second notch; is that correct?

A. I don't know.

Q. Well, let me see if I can make it clear to you. You say you did try it in the second notch, in second speed, did you not?

A. Yes, sir.

Q. But it would not go that way?

A. It wouldn't work.

Q. It would not work?

A. No, sir.

Q. What happened when you put it in the second notch?

A. It breaks the tool bit.

Q. Breaks the tool bit?

A. Yes, sir.

Q. So you put it back in the other notch?

A. Yes.
Q. Number one notch.
A. I put it back and always work on number one notch.
Q. I see.
A. That is the only way to work.
Q. All right. Now, when was it that you tried it in the number two notch?
2770 A. How?
Q. When was it that you tried it, and found that it broke the bit, in number two notch?
A. When was it?
Q. Yes.
A. When I was first starting to work there on that steel.
Q. When was that?
A. Oh, I don't know; I couldn't remember that. Last winter some time, it was.
Q. Some time last winter?
A. Last winter or last fall, whenever they first started using that kind of steel.
Q. That was a year ago, was it?
A. Oh, I don't know when it was.
Q. How?
A. I don't remember exactly when it was. I didn't keep any track.
Q. Did you tell that to Mr. Groll?
A. How?
Q. Did you tell that to Mr. Groll, the foreman, that it could not be run in second speed?
A. When we started using that steel, Jack Welsh was the foreman.
Q. I see.
A. And when Groll was foreman, I asked him—he
2771 gave me the job, and I asked him if he knew anything about that steel.
Q. Yes.
A. And he said "Yes". I says, "well, it is pretty hard." I says, "I can't work any faster. You have got to run it slow. Otherwise it won't work at all." He says, "All right, go ahead and do it." Then he went to that kid in there, Eddy, and he told me to show him how to work it. That is the only way you can work it.
Q. In other words, you had learned, when you were working under Welsh, when you first started working on that steel, that if you ran it faster than the first notch, you would break the bits?

A. Yes, sir.
Q. So that when Groll came there, you told him that, did you?
A. Yes, sir, I told him.
Q. He asked you if you knew anything about working with that steel?
A. Yes, sir, and I asked him.
Q. You told him that the machine had to be run in the first notch?
A. Yes, sir.
Q. That is right, is it?
A. How?
Q. You told Groll that the machine had to be run
2772 in the first notch?
A. No, I never told Groll. He told me.
Q. I thought you said—
A. I worked on the job, and he told me to go ahead and do it.
Q. He told you to go ahead and do it?
A. Yes, sir.
Q. Did he not tell you—
A. He didn't say anything else to me.
Q. He did not tell you anything about speeding up the machine?
A. No, not a thing.
Q. He did not say anything at all to you about speeding up the machine?
A. Not at all.
Q. How?
A. Nothing; he didn't say nothing.
Q. Well, did he come back after he talked with you the first time, and tell you to speed that machine up?
A. He never say nothing like that.
Q. He never had any conversation with you with reference to that?
A. He never said nothing about speeding up anything, to me.
Q. He did not?
A. No, sir.
2773 Q. Well, is the conversation that you have given us here the only conversation that you had with him with reference to working on that steel?
A. How is that?
Q. I say, did you ever talk with him again, about working on that steel?

A. No. He never said nothing. That is all I asked him, if he knew anything about that steel, and he says, "Yes", and he asked me if I worked before on it, and I says "Yes", and he says, "Go ahead and do it".

Q. And that is the only thing he ever said to you about it?

A. That is all he ever said to me.

Q. Well, did he ever talk to you at any other time, about the speed of your machine?

A. No, sir.

Q. He did not?

A. No, sir; he never say anything.

Q. Well, now, did you always run that machine in first speed, even though you were working on something other than that steel that you have been talking about?

A. No, sir.

Q. Then there were times when you ran your machine faster than the first notch, were there not? On some of the work you could run it faster than the first notch, could you not?

A. On some, yes sir, on some of the work, on some 2774 of the steel I ran faster.

Q. Yes.

A. But not this steel, though.

Q. How?

A. But on other steel?

A. Yes, sir, I worked faster, but that was the only steel I worked slow, that 548.

Q. But on the other steel you worked faster?

A. On the other steel I could work faster.

Q. You could work faster on it?

A. Yes, sir.

Q. Well, what notch did you use your machine in, on those steels, the other steels, the softer steels?

A. Two and three; sometimes.

Q. How did you ever discuss the speed of your machine, or the notch you set it in, with Groll, in connection with working on the other steels?

A. No, sir, he never say anything to me.

Q. He never said anything about it?

A. No, he never say anything about it.

Q. Did he ever come up and set your machine up at a certain speed?

A. He never touched my machine.

Q. He never did?

2775 A. No, sir, he never did—not that I saw. When I run a machine, I run the machine.

Q. Regardless of what the foreman says, you run your machine, do you?

A. How?

Q. I say, regardless of what the foreman says—

A. Yes, sir.

Q. How?

A. What do you mean?

Q. Well, you say that when you run a machine, you run that machine.

A. Yes.

Q. What do you mean by that?

2776 A. Well, I mean that when I run a machine, I do my job, and I set it.

Q. You do not take orders from anybody?

A. I take orders, what he tells me to do.

Q. And if he told you how to do it, what about that?

A. He don't tell me how to do it.

Q. If he did tell you how to do it.

A. I have to take his orders, yes, sir.

Q. I see. So that if he had told you to run that machine in the second notch, on the hard steel, you would have done it, wouldn't you?

A. Why, sure I would have done it, but it wouldn't work.

Q. Well, that is not your worry, is it?

A. How it that?

Q. That is the foreman's worry. If it breaks the machine, that is up to him, if he has ordered you to run it in second speed; that is so, is it not?

A. If he tells me to do that, that way, I have got to do it.

Q. So that if Groll told you on that hard steel, when you were cutting that 548 die, to run that machine in the second notch, you would have run it, or tried to, that way, would you not?

A. If he tells me to, I would run it that way.

Q. And you would have done the best you could with it?

A. Why, sure.

2777 Mr. Keele: I think that is all.

Mr. Walsh: Nothing further.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: Theodore Ohlson.

THEODORE OHLSON, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) You are Theodore Ohlson?

A. Yes, sir.

Q. You have been previously sworn, and testified in this proceeding, have you?

A. Yes, sir.

Q. Were you present at the hearing the other day when Mr. Groll testified?

A. No, I wasn't.

Q. Well, Mr. Groll testified that it took you a long time to face certain plates, or certain disks that are used by Ramet. I believe his testimony was that it took you twelve hours to do a certain job that was done by another man in three hours.

Now I will ask you if you remember having faced certain plates for Ramet.

A. Oh, I have faced them plates plenty of times, yes, sir.

2778 Q. Well now, will you just go ahead and tell the Examiner here what kind of plates those are, what they are made of, what they are used for, and what you have to do to them when you face them.

A. Well, those lapping plates are large diameter cast iron plates, made out of cast iron, about I should judge two feet or two and a half feet in diameter, and when they are new they are about two inches thick.

Q. What do they weigh when they are new?

A. Well, they probably weigh 80 pounds, or 90 pounds, and they are used by the Ramet-Vascoloy people for lapping down their ramet tool bits, because they seem to be about the only thing they can get, to cut them down; and that is used to take the burrs and the rough spots off them tool bits.

Q. Well now, at certain times did you have to reface those plates which you have described?

A. Yes, sir. Them plates get wore, and then they have got to be refaced.

Q. All right. Now the machine upon which you did that work: is that in the tool room?

A. No, it isn't.

Q. Where is it—or where was that machine located with reference to the tool room?

A. That machine was located over in building 6.

Q. And the tool room is where?

2779 A. On the second floor in building 3.

Q. And how did you go about—you tell the Examiner what you had to do to those plates.

A. Well, them plates were brought over from Ramet, over to building 6, and they had to be put up on a lathe, and just screwed on there.

Q. Is it possible for one man to fit one of those plates into the lathe, and into the—whatever it is that holds it?

A. Oh, it is possible if he is a good strong man, yes, sir, but—

Q. Well, did you have—

A. (Continuing)—when Jack Welch was foreman in there, he never said that one man should try to lift them plates.

Q. At the time when you had to face those plates, were you furnished with a helper?

A. Well, we were not furnished with one, no, sir. We had to get—

Q. What would you have to do, in order to get somebody to help you?

A. Just ask the foreman to have a man go over and help us put them plates on the machine.

Q. All right. Now, what about the setting of the speed or the feed of the machine?

A. Well, that is set—on the face of them plates, they want a kind of certain surface, so it will hold them tool bits

2780 down better; and that surface was—that is, they had—the foreman of the Ramet department, and Mr. Groll fixed their own speed, and their own surface that they wanted to be cut on them plates.

Q. The foreman of Ramet, who was going to use those plates—

A. In his department.

Q. —and Mr. Groll—

A. Yes, sir.

Q. (Continuing)—figured the speed at which the machine should run, did they?

A. Yes.

Q. Also the feed at which the bit should cut, or at which the tool should cut; is that right?

A. They were the ones that figured it up, yes, sir, where they got the best surface on the plate, with the best speed that the machine could do the work at.

Q. Now, you had nothing to do, then, with setting the machine, or setting the feed and the speed, did you?

A. Well—

Q. That is, except on the instructions which you received. I mean, you took the orders which they gave you about setting the machine.

A. Yes, sir.

Q. That is right, is it not?

A. Yes, sir.

2781 Q. Now, how long did it take, at the speed and feed at which you were required to run the machine, to make the cut on those plates?

A. Well, after it was set up and ready to run, that cut would take at least an hour.

Q. At least an hour.

A. Yes, sir.

Q. And then after the cut itself was made, was there some trimming up to be done?

A. Yes, sir, there was, because they wanted that face of the plate—it was recessed in there, so that it left a little wall about three-sixteenths of an inch, or a quarter of an inch on the outside edge, or the outside circumference of that plate, so that if the ramet bits would get loose, they wouldn't fall down into the tube part of the machine, but they would land on top of the plate.

Q. And then of course after you had cut the face down, it was necessary for you to trim the edges, was it not?

A. Yes, sir, so that there would be about a three-sixteenth or a quarter of an inch shoulder around the outside edge.

Q. Yes. Then after you had finished cutting one plate, what did you have to do with the tool?

A. You make one cut across that plate, and the tool bit would be wore so that it would have to be resharpened.

Q. And you would have to resharpen the bit?

2782 A. Yes, sir.

Q. After each cutting of that plate; is that right?

A. Yes, sir.

Q. Then it was necessary for you to change the plate.

A. Yes.

Q. To remove the one that you had finished, and put on another one?

A. Yes, sir.
Q. Were you able to do that alone?
A. No, sir, I never done it alone.
Q. Whom did you get to help you do it?
A. The one I usually got was Charlie Petkas, because he was a big two hundred pounder, a big, husky man.
Q. And he could hold it on while you adjusted it in the machine, is that right?
A. Yes, sir.
Q. Where would you have to go to get a tool?
A. Up in the tool room.
Q. Did Groll know that those were the conditions under which you had to work? Did Groll know that?
A. Why, sure he knew it. When he gave you the job, you would have to ask for a helper.
Q. I see. Now, at the time the trouble broke out there on February the 17th, had they used—or were they continuing to use the same lathe that you did these jobs on?
2783 A. Yes, sir.
Q. They were using it?
A. Yes, it was the same.
Q. Do you know whether they are using that lathe now?
A. No, sir, they are not.
Q. Do you know whether or not they have a new lathe for that purpose?
A. Yes, sir.
Q. At least they are using a different lathe?
A. They are using a different lathe.
Mr. Walsh: That is all; you may inquire.
Mr. Swiren: Just a moment.
Mr. Walsh: Oh, pardon me; there is one more question, if the Examiner please.
Q. (By Mr. Walsh.) About how many plates would you do at a time, or did you do them more than once?
A. Yes, I done it more than once.
Q. You did it more than once?
A. Yes, sir. I done it a good many times for Jack Welch, but I only done it once—
Q. For Mr. Groll?
A. For Groll.
Q. How many plates did you do at that time?
A. Four.
Q. Four?

2784 A. Yes, sir, but the times I done it for Groll, I only done three.

Q. You only did three?

A. Yes, sir.

Q. Do you recall how long it took you to do it?

A. Well, on the average it would take about between seven and eight hours.

Q. Between seven and eight hours?

A. For four plates.

Q. For four plates.

A. Yes, sir.

Q. Do you remember how long it took you to do the three plates?

A. No, I can't say.

Q. You did not run into any special trouble?

A. No.

Q. Or anything that was different from the other times when you had done it for Walsh,—did you?

A. No, sir, I can't say that I did.

Mr. Walsh: All right. You may inquire.

Cross-Examination.

Q. (By Mr. Swiren.) When did you do the job for Groll?

A. I think that was on the Monday before the strike.

Q. That was the only time?

A. That was the only time I done that job for Groll, yes, sir.

2785 Q. And you say that you know now that there is a different lathe being used there?

A. Yes, sir.

Q. Where was the lathe that was being used before?

A. How is that?

Q. Where was the lathe located, that was being used before?

A. The lathe that was used before was located in the back of building No. 6.

Q. On the first floor, near the runway; is that right?

A. Yes, sir.

Q. Right near the large grinder?

A. Yes, sir.

Q. That machine—

A. That grinder wasn't in there the last time I worked in there.

Q. I see. How far is that lathe from the door?
A. From the door?
Q. Yes.
A. From the door—well, I should judge about—well, there are three doors right in a row there.
Q. Well, how far is it to the side door, leading right to the yard; seven or eight feet?
A. About that, I think.
Q. Yes. Then if you wanted to go across to the tool room, you would go out that door, and go across the yard,
2786 would you not?
A. Yes, sir.
Q. And you would go up to building 3, which is what—how far away?
A. Well—
Q. 150 feet?
A. There is one building in between there.
Q. About 150 feet away.
A. Well—
Q. Or 100 feet away, would you say?
A. Oh, it is all of 150 feet away; I would say.
Q. All right. And then you would have to go upstairs, to the tool room?
A. Yes, sir.
Q. On the second floor.
A. Yes, sir.
Q. And that might take you about five minutes, to go from the tool room to the lathe?
A. I should judge so.
Q. So when you went to get a helper, that is about the time that you would have to consume for that purpose; is that right?
A. Well—
Q. That is, five minutes to walk over, and five minutes to walk back.
2787 A. And maybe a few minutes waiting there, if Charlie happened to be doing something. He might have to finish a little out on some job, or something, and you would have to wait for him.
Q. You got a helper whenever you needed one, then, did you?
A. Oh, yes.
Q. So that you did not have to lift the plates alone?
A. No, sir.

Q. Mr. Groll expressed himself as not being satisfied with the time that was being spent on that job, did he not?

A. From what I heard of the testimony, he did, yes, sir.

Q. Yes.

A. (Continuing) That is, I didn't hear what his testimony was, but they all say that he did.

Q. You knew it before, too, did you not?

A. How?

Q. You knew it before, too, did you not?

A. On that particular job?

Q. Yes.

A. No, sir.

Q. That was just a day or two before the—

A. Strike.

Q. —Before the sitdown.

A. Yes, sir.

Q. And since then you have learned about what is going on in the plant, have you?

2788 A. Some, yes, sir, but I know about that lathe because—

Q. Go ahead.

A. (Continuing) —the day I was working on it, they said that was the last time that machine was going to be used on that job.

Q. And where is the lathe that is being used on the job now; that is, where is it located?

A. That machine is located over in the old carpenter shop.

Q. That is in what building?

A. Oh, I don't know what number building that is, but it is where the old carpenter shop used to be.

Q. Well, have you seen the new machine, the new lathe being used?

A. No, sir, I haven't.

Q. How do you know about its being used then?

A. Well, I know it is being used.

Q. Well, tell me how you know.

A. Well, I know, because I heard that it was being used.

Q. Where did you hear it?

A. (No answer.)

Q. Let us have it, Mr. Ohlson. Where did you hear it?

Mr. Walsh: That is objected to as immaterial, if the Examiner please.

Q. (By Trial Examiner Dudley.) Did somebody tell you, Mr. Ohlson?

2789 A. What?

Q. Did somebody tell you that it was being used?

A. Well, yes, sir, somebody did tell me.

Mr. Swiren: Well, let us have it.

Q. (By Trial Examiner Dudley.) Do you remember who it was?

A. How?

Q. Do you remembe who it was, that told you about it?

Mr. Swiren: If the Examiner please, I suggest that I be permitted to ask my questions of this witness in my own way. This witness testified on direct examination that he knew, and I would like to find out just what he does know. I think the Examiner ought to wait until I finish, before that sort of question is put.

Mr. Walsh: I wish to further object to the question, if the Examiner please, on the ground that it does not make any difference how the witness heard it, if he knows; and of course if it is untrue, the company can refute it.

Mr. Swiren: Let us first find out from the witness how much he knows about it. He has testified on direct examination about it.

Q. (By Trial Examiner Dudley.) Do you remember, Mr. Ohlson?

A. All right, I will tell you. Mr. Dugan told me.

Q. (By Mr. Swiren.) Mr. Dugan told you?

A. Yes, sir.

Q. And did you ask about what was going on in the

2790 plant? Is that the way you found out?

A. No, sir, I didn't ask what was going on in the plant.

Q. How did he happen to tell you; how did you happen to find out, then? Did Dugan just come up and tell you?

A. No, sir.

Q. Well, just go ahead and tell us all of the circumstances under which you found out.

A. Well, I happened to ask him one day if they did discontinue using that machine over there for them plates, and he says, "Yes, they did, and they are now using that big lathe over in the carpenter shop."

Q. You had in mind some of the problems that you faced, when you worked there just before the sitdown; is that right?

A. How is that again?

Q. I say, you had in mind some of the problems that you faced, when you worked there, just before the sitdown?

A. Sure.

Q. And that is why you were interested to know whether there had been any change, or not?

A. Well, I just was interested to know whether it was being done more successfully over there.

Mr. Swiren: I see. That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you very much.

(Witness excused.)

2791 Trial Examiner Dudley: We will take a few minutes' recess at this time.

(A short recess was taken.)

Trial Examiner Dudley: I will call the hearing to order.

Mr. Walsh: Art Holm, Sr.

ART HOLM, SR., recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Art Holm, Sr.?

A. Yes, sir.

Q. You have been previously sworn, and testified in this proceeding?

A. Yes, sir.

Q. Mr. Holm, I will hand you Respondent's Exhibits Nos. 31 and 33, and ask you to state whether you have ever received those documents from the office?

A. No, sir, I have never seen either one of those pieces of paper before.

Q. Did you ever receive the original, or any copies of those papers?

A. No, sir, I have not. I never seen one like them before.

Q. Well, directing your attention to Respondent's Exhibit No. 31, a memorandum dated October the 15th, from Mr. Anselm to Holm, Welch and Philips, designating a

2792 move of the Tantalum Department from the west half of the tool room; you made that move, did you?

A. Oh, yes, we talked that over, but I mean, I never seen it in typewritten form like this.

Q. Under what circumstances did you talk it over?

A. Well, he just gave me orders to move it.

Q. What had to be moved?

A. Well, before we could even start, why, we had to move a whole row of automatics; we had to make room—

Q. Automatic what?

A. Automatic screw machines.

Q. Are they large machines?

A. Well, they weigh around 1500 to 1950 pounds.

Q. And how many of those machines were there, in the row that you had to move?

A. I believe there was nine in that row, eight or nine.

Q. And did you have to move those machines to some other part of the building?

A. Oh, yes.

Q. Was the space already prepared; had you previously prepared the space to which those machines were to go?

A. No, sir. We had to take part of the— There was equipment there, on the east end of the building, so we kept shoving that back out of the way, and taking a machine off of the other end, the west end, until we got room enough 2793 to get a piece of equipment back on the west end; and we was just going around in circles, you might say.

Q. Were you furnished with any blueprint, as to where those machines were to go?

A. No, sir, there was no blueprint.

Q. Did they furnish you with any electrical blueprint of the power lines, indicating where the power lines were to be put?

A. No, sir. We had only one little pencil sketch, I believe, that showed four lights up in the ceiling; but as far as any blueprint was concerned, there was no sign of a blueprint.

Q. Did these machines that you were moving in there—or that you were moving, require power or shafting, or anything like that?

A. Oh, yes.

Q. I will ask you whether you got that job finished over the week end; did you finish that over the week end?

A. Well, we never shut down production there for one hour. To get that job up the way it is now, it took a brand new box, and a big switch; but when we were working on it, we just took and strung a couple of shorestrings across the floor for about 100 feet, so that they could use the welders; and we had it all hooked up so that they could use it on Monday morning, so that they could run the welders. There was nothing tied up; there was no production shut down.

2794 We had no layout, and we didn't know where to run the pipe in the first place. All of our permanent electrical stuff is in conduits. So, like I say, we just strung what we call shoestrings there.

Q. But they were able to operate on Monday morning; is that right?

Mr. Swiren: Now, just a moment. That is objected to. I don't think it makes any difference whether they were able to operate or not. This man had instructions, and he either carried them out, or he did not; and whether the company could operate or not, is not the question. If the man was fired for not carrying them out, whether the company could operate or not is immaterial. The question is, was he discharged for being a member of lodge 66, and engaging in union activities.

Trial Examiner Dudley: Oh, his testimony would have a bearing on the speed at which he was able to work, and the matter of using his own judgment, and so forth.

Q. (By Mr. Walsh.) Would it have been possible—with the instructions which you received, would it have been possible to premanently establish—or to have permanently made that move over the week end?

A. No, sir, it couldn't be done, because we had to get the Public Service down there, and put in a new feed line. We had no power in that building, on the west end at all, but just a lighting system. There was no power there at all.

Q. So that if the job was not completed perma-
2795 nently, by Monday morning, it was through no fault of your own?

A. No.

Q. But it was necessary, as you say, to get the Public Service Company in there, to put in the power line?

A. Well, sometimes they would move quick. We have hooked up jobs temporary, and sometimes we wouldn't finish them up for three or four months.

Q. I see.

A. Until we found out exactly where they wanted them permanently. But there was no blueprint on this job; it was just verbal.

Q. Now referring to Respondent's Exhibit No. 33, which is a memorandum dated December 9, 1937, from Mr. Anselm addressed to Holm, Nelson and Streed, referring to a new form for the reporting of labor on various jobs: did you receive such forms and such instructions?

A. Not in that month, no, sir. We had a new form, but that was during Mr. Dow's administration there, I believe. We used to have just a little salmon-colored card about three by six, and every morning I would just make out a different card, and charge it to the different departments. Sometimes I would have thirty or forty cards.

Then some time after that they turned around and got out big sheets, about as big as that one there, I should judge (indicating); and on that, instead of making out individ-
2796 ual cards for each job, I just put down the man's name, and the number, and the job he was on, with the different hours, until his day's work was completed.

Q. That would be a sheet, say, eight by fifteen, would you say; about the size of a legal-size sheet of paper?

A. Well, it would be a pretty fair size—well, it would be about the same size as that yellow piece of paper that you have there.

Q. About the size of this yellow legal tablet that I have.

A. Yes, sir. They were wide.

Q. They were wide.

A. Yes, sir.

Q. Now did you continue to use those forms?

A. Oh, yes. We had orders to finish them before we went home at night, so as to make sure that the kid could get them the next morning.

Q. All right. Now, referring to Respondent's Exhibit No. 34, which is a memorandum from Mr. Anselm, dated October 7th, 1936, directed to yourself, setting out various items of work to be done: I will ask you to read that over and tell me whether during the month of October you finished all of the work in the carpenter department called for by these various items here.

A. Well, this here is just—I had about—maybe a couple of them every month, or every two months. It is only
2797 to make sure that all of the jobs are completed. I would have maybe seventy-five jobs, and sometimes they might overlap; that is, we would start one job, and then maybe we would have four or five jobs going, and we would have this going, so that they would be overlapping; and then he would ask me when I was all through; he didn't know whether I was through or not. He could see it, maybe, but he would say, "What are you going to do with this" or "with that"? And I would suggest that we ought to put in a cupboard, or a storage bin, or something. This storage room in the ware-

house, that is complete. The reason these jobs are not complete, he knows just as well as I do, why they are not complete.

Q. What is the reason—or what was the reason that they were not completed during the month of October, if they were not completed?

A. All this amounted to was tacking a little insulation around on the inside of the building, and putting in some lights. We had temporary lights in there. We didn't shut off the power. Then we would get a rush job; at that time they were remodeling the office, and I think that I had the electricians over there off and on for three weeks; and they were working on this in between.

Q. I see.

A. And the same way with the carpenter work. We installed a Marcy mill down there in that building, and it
2798 was a pretty big job, and we had no blueprint on it; so we put it up the best way we knew how. It was all concrete. The pipes are buried in the cement. When we got down to the final little pieces attached to it,—you understand it takes two machines to make one; it is a kind of around-the-loop proposition—after we had it all installed in the concrete, they found a blueprint that Mr. Luther Henry had in his drawer, the whole complete outfit that we were looking for for a month. So after we got that blueprint, why, we done some extra work. We found out that we were not quite high enough. We had to make the hood, or a connection from one spout of the machine; so we remodeled it to fit the blueprint. That blueprint we got after we was practically through with it; the power was in, and it was ready to run; but nobody finished this here metal work on the end. That wasn't our work at all. The man I had down there part of the time was the man I had working in the die room; and maybe I would alternate back and forth.

Q. Now, Mr. Holm, are there any other jobs on that list that were not finished during the month of October?

A. Well, this skylight was not completed. We would have got that in, if they hadn't gotten into an argument. That job would have been about a one day job for four men, that skylight that they are bellyaching about.

Then this window sash, that was a piece of glass
2799 that we stuck in the window to keep the wind from blowing on Mr. Raithel,—or it was a piece of plate glass struck up against the window with metal straps on it.

Q. Like a ventilator?

A. Yes, sir; it just deflected the wind when he opened up the window.

The next job is done. That job is complete.

There ain't a job on there that isn't running now. There is one job that I didn't finish, of course, and that was the skylight; but the rest are completed.

Q. You did not finish the work in building 6.

A. No.

Q. Did you make the necessary benches for the Contact Grinding Department?

A. No, but that is all, I believe.

Q. I will hand you Respondent's Exhibit No. 32, which is an interoffice memorandum from Mr. Anselm to yourself, dated November 23rd, 1936, and directing your attention to the second line there, I will call your attention to items 3 and 4 in building 6—I think it is.

A. Yes. Well, this here, they just overlapped.

Q. I see.

A. Do you see what I mean?

Q. So that this was carried on to the next month; is that right?

2800 A. Well, sometimes we would be—we would keep a job going—on some of those jobs we would be running a month, maybe, and then we would make a change, so that we wouldn't complete the job—

Mr. Swiren: Pardon me, but I suggest that the last question be read to the witness. We are getting lost in these long, rambling answers.

Trial Examiner Dudley: Read the question, please.

(The question was read.)

A. These here jobs on these sheets, until they are complete, they overlap onto the next page.

Q. (By Mr. Walsh.) Until the next memorandum came out?

A. Yes.

Q. Is that what you mean?

A. Yes, sir.

Q. All right. I will hand you Respondent's Exhibits 30-A to 30-G both inclusive, and ask you to examine that exhibit, or that group of papers. Did you ever receive those various work orders? Will you look through the exhibit,—or have you examined it already?

A. This is one I have never seen.

Q. That is Respondent's Exhibit 30-A; is that right?
A. Yes, sir.
Q. What is the date of that?
A. February 11th.
2801 Q. Calling upon you to do what?
A. Well, it looks like it is about a half an hour's job, to go over there to put a little putty in a window.
Q. Now, referring to Respondent's Exhibit 30-B, what does that—or, first, what is the date of that, and what does it direct you to do?
A. Well, this here is a repair on the sprinkler system. Those buildings have a sprinkler system in them, and they have a main valve in one corner of the building.
Q. In which building?
A. In each building.
Q. In each building.
A. Yes.
Q. Yes.
A. They have their own separate valve, that controls it from the outside, or the street, into the building.
Q. Yes.
A. Well, now, in this here big piece of metal fitting, there is a valve in there. The pipes themselves are perfectly strong, they way they have them there, but they have a big valve that works on a hinge, and it has a soft rubber ring, and if anything breaks,—there is about forty pounds of air that holds down about sixty pounds of water, and if anything breaks there, the air goes out and the water comes through. Well, if it leaks,—if there is just a leak in the valve, of course
2802 the water goes in, and the system might freeze up. This a dry system they have, where they have no heat. Well, we have a man down there. I didn't have nothing to do with it. We installed it, but that watchman goes around and keeps the air on. You see, the air seeps out, sometimes, and they have got to watch it, so he comes up there. So when he declined—it is a little rubber gasket, just a little soft rubber gasket about three-eighths of an inch square, that runs all the way around this big valve, and he thought maybe that rubber was worn, and that is the reason it was leaking.
Q. That is commonly known as a dry ring, is that it?
A. We call it a dry ring, yes, sir. It keeps the system dry.
Q. Yes.

A. So we ordered a new one. Whenever we get this kind of a job, I have got to go to the superintendent, and find out when they are going to shut down. I can't shut the plant down. I fix it when he gives it to me.

Q. Yes.

A. Well, in this case I talked to this man twice in the shop.

Q. By "this man", whom do you mean; you spoke to whom?

A. Mr. Nelson.

Q. Yes.

A. (Continuing.) And I says, "Well, do you want
2803 us to take it out? It is a big job; you may have to take out about 75 bolts, take the whole thing out." He says, "What is the use? It is holding now."

You see, you have got to be real particular, and clean that out perfect, because if you leave one little piece of grit in there, of course it will seep through.

Q. Who was Mr. Nelson?

A. What?

Q. What did he do?

A. He is chief watchman, who has charge of the boiler house.

Q. Chief watchman in charge of the boiler house.

A. Yes, sir.

Q. Was it his duty to inspect these sprinkler systems?

A. Well, there is an inspector comes around every month, to inspect them.

Q. Somebody from the outside?

A. I think from the insurance company. He comes around and inspects them.

Q. Some outside inspector also comes and inspects them?

A. Yes, sir.

Q. And Mr. Nelson was of the opinion that it did not need changing; is that it?

A. You see, after he cleaned it out again, and put it in, why, she held.

Q. I see.

2804 A. And I said, "Well, if you don't want to shut it down, O. K." It wasn't hurting anything; it didn't hurt anything if the water went in there.

Q. I see.

A. Except in the wintertime, it would freeze up and bust; but in the summertime, it wouldn't hurt anything.

Q. What is the date of that order?

A. That is the 25th of November.

Q. And Mr. Nelson, whose duty it was to keep track of those things, told you that it was all right; is that it?

A. He gave me the O. K., and I said, "All right; then we are through."

Q. I see.

A. I said, "O. K.; if you don't want us to, we ain't going to fix it, because it is going to be a good big day's work."

Q. All right. Now, what is the next one? Respondent's Exhibit 30-C—

A. Well, this here job I think they are mistaken on. I think this job is about two years old.

Q. What is that job?

A. Well, that is a little partition in the basement, about—oh, I should judge 16 feet long; and all it really amounted to was to shut off a part there, where they used quite a bit of acid. They put a new centerless grinder down there, and they thought that maybe the fumes were getting to the metal; 2805 so they wanted to know about putting a partition in there; and I think maybe I would get three or four of these copies, but before we would ever get to it, we would move the equipment some place else.

Q. And that was never done?

A. There was no emergency about it.

Q. What is the next one there; Respondent's Exhibit 30-D.

A. Let me see.

Q. What is the date of that?

A. This is dated June 20th, 1936. Yes, I got this copy, but I see that they have got a mark on it. Let me see. They called in an outside contractor to do this job on the 12th and 15th. Well, that job wasn't done I know on the 15th of February. I don't know who put that on there. I didn't.

Q. Well, what were the reasons for not doing the job?

Mr. Swiren: Just a moment. May I see that for a moment, please?

The Witness: Yes, sir.

Q. (By Mr. Walsh.) What was that job?

A. That was in the mens toilet. They had a large wash sink in there, and the man who ordered it thought that he was going to get nice, fancy drinking fountains in there. He wanted to know if he could get a new sink, and I says, "Put

in an order, and we will give you anything you want." There was no emergency about it. The toilets are there, and
2806 the sink is there, and it will last for fifty years.

Q. All right. Now, refer to the next job there, Respondent's Exhibit 30-E. What is that job?

A. This is a big job. "Change pully on grinder in basement to run 1900 r. p. m." That is a machine that has been running down there for some time; somewhere in that building, for the last 25 years.

Q. Yes.

A. It has a motor, a direct motor connection. The motor and the pulley are the size that the wheel will run. You know you can only run an emery wheel according to the diameter. They have got kind of a wise stool pigeon down in there, and he decided maybe he would put in a little more speed. The actual r. p. m. of the wheel I think is 1825 right now.

Q. Yes.

Mr. Swiren: Just a moment. I suggest the remark about the "wise stool pigeon" go out.

The Witness: O. K. All it amounted to was to find another little pulley, and put on there, about a quarter of an inch bigger in diameter.

Q. (By Mr. Walsh.) In what you were asked to change, did you have to change the grinding wheel—

A. No, sir.

Q. —or the motor, or anything of that sort?

A. No, sir. This job here, I would have done it six
2807 different times if he had let me have the machine when I wanted it. I can't shut those machines down when they are running, you know.

Q. You never had a man available to do the work when the machine was not used?

A. When I had him available, I would send him over there, but they would be using it.

Q. Did you send a man over there?

A. Yes, sir, three or four; I sent them over three or four different times. It was just a case of putting a little bigger pulley on.

Q. And changing the r. p. m. from 1825 to 1900?

A. Yes, sir. The wheel that was on there ran 1900 when it was new, but it was wore down by that time.

Q. I see. Now, take the next one; what is the next one there?

A. Six braces or supports for water jackets. That is a little piece of metal, made out of about—a piece about a quarter by an eighth of an inch thick, and it turns off at the bottom, and all it amounts to is a little bracket. Now, we don't have no braces in there.

Q. No what?

A. (Continuing.) And I told Luther Henry to send the order up to Jack Welch, and get them made, because he makes them, and I don't make them. They have got a couple of bricks under there.

2808 Q. What exhibit is that?

A. 30-F.

Q. All right. How about Respondent's Exhibit 30-G?

A. That is a kind of random order: repair three steam lines, leaking badly.

Q. When did that order come out?

A. That is marked November 2nd.

Q. Were those steam lines all repaired?

A. Why, we repaired them steam lines I think on an average of about four times a week. Every time they turned off the steam—they had a habit of economy down there, you know, and they would shut off the steam, and cool off the system. This was on the fourth floor of building 5.

Q. Yes.

A. (Continuing.) When you shut down them steam lines, you get them cool, and then when you start up the steam again, why, they start expanding, and you can watch a steam line across the floor for a range of about 100 feet. Every time they would do that, they would crack one of those bents. We put in, I should jude—well, that was a regular standard job every winter, and it came along just on account of that habit of economy that they had.

Q. Do you know whether that job was done or not?

A. Well, I think—I don't know whether I done this or not, but I know I have done work on that same thing,

2809 and it is a big long job.

Q. Now, during the time—or rather, during the fall of 1936, were you working any overtime?

A. Oh, yes, we worked plenty of overtime.

Q. When you worked overtime, did you have to fill out any report, or did you have to make any request on the superintendent, to work overtime?

A. On all overtime I had a certain little pad, that was just for overtime, and I would have to show on there the

name of the men, how many hours they worked, and what they done.

Mr. Walsh: I will ask the reporter to mark this paper Board's Exhibit No. 39 for identification.

(The document referred to was marked Board's Exhibit No. 39 for identification.)

Q. (By Mr. Walsh.) I hand you this paper which the reporter has just marked Board's Exhibit No. 39 for identification, which is entitled "Permit to work overtime," and ask you whether that is the paper that you had to fill out when you worked overtime.

A. I filled that out whenever I had a man work overtime, yes, sir.

Q. And whenever you worked overtime yourself, would you fill one of these out?

A. Well, no. My clock card would show when I worked overtime.

2810 Q. Did you work any overtime during the fall of 1936?

A. Quite a bit.

Q. And about how frequently would you work overtime, and for how long periods?

A. Well, sometimes we would work there night and day. In that plant I have worked as high as 38 hours in a stretch.

Q. 38 hours of overtime in a week?

A. No, in one shift.

Q. Oh, 38 hours of overtime in one shift.

A. Yes, sir. It all depended. It might be they would bring in a piece of equipment, or something like that; or if there was a breakdown, why, we would stay there until it was done.

Mr. Walsh: At this time I would like to offer Board's Exhibit No. 39 in evidence.

Mr. Swiren: May we see it, please.

The Witness: I signed that on the bottom there, and Mr. Anselm signed it also.

Mr. Walsh: The writing does not make any difference.

The Witness: No. That was for a sash, or window frame.

2811 Mr. Swiren: If the Examiner please, I do not know what pertinency a permit to work overtime has, to the issue in this case. There are some other interesting forms out at the plant, I imagine, but I do not see how they have anything to do with this issue.

Mr. Keele: I cannot see the relevancy of a blank. If there is any question about whether we have forms of the nature in the plant, and whether they are used, certainly we will be glad to admit that; but as to this particular form, which has some writing on it, but has nothing to do, so far as I can see, with this case—it has the words written on it, "1602 Hinman avenue," or "Human avenue," or something of that kind, and "picture frame 2 by 27." That is what is written on it. Now, unless it can be tied up with the proposition that he received a slip like this, or made out this particular slip, it certainly is not relevant.

Mr. Walsh: If the Examiner please, I do not contend that anything written in pencil on there is relevant to anything here, and I would like to have that excluded from the offer of the document.

Trial Examiner Dudley: Do counsel still object?

Mr. Swiren: Yes.

Trial Examiner Dudley: The objection is overruled, and the document may be admitted, that is, just the form itself.

2812 Mr. Walsh: Yes.

Trial Examiner Dudley: Not the writing.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 39, Witness Holm.)

Mr. Walsh: You may inquire.

Mr. Keele: Iet me have those exhibits, please.

Cross Examination.

Q. (By Mr. Keele.) Mr. Holm, as I understand it, you stated that you never had seen a copy of that order with reference to the moving of the tantalum department to the west half of the tool room.

That is correct, is it?

A. No, not in that shape.

Q. I see.

A. I never seen that copy.

Q. Well. have you ever seen a copy, or have you ever seen—did you ever receive an order in which the words which appear here, appeared?

A. I got one on one of them pink slips, like you have there.

Q. In other words, this order,—or, the words that are in this order, appeared on that pink slip, did they?

A. On the pink ticket.

Q. Did that follow the same wording, as appears in this particular slip?

A. Well, it meant about the same.

2813 Q. Did you discuss that order—I believe you said you discussed it with somebody. With whom did you discuss it?

A. Well, I had to find out from the foreman where they wanted it. There was no print on that or nothing; and we had to get orders from somebody, as to where they wanted them machines.

Q. Meaning by that, that you did not know just exactly where they were to be set, as I understand it. That is correct, is it not?

A. Yes.

Q. Now, did you talk with Mr. Henry, or Mr. Anselm, about this job?

A. I don't know. I most likely talked to three or four different men on it.

Q. Of course, you talked to Welch, because it involved his department; and Howard Philips; that is right, is it not?

A. Well, it was Howard Philips, really.

Q. I see.

A. I think that is when he got there, about that time.

Q. Now, the instructions said that you were to have sufficient men to make that move over the week end. That is correct, is it not?

A. Yes.

Q. And, as I understand it, you did not have enough men?

A. Oh, yes, I did. I had it all running, as far as that is concerned; it was all running Monday morning.

2814 Q. Now, in other words, is it your contention, that this order was carried out as given?

A. On Monday morning he could use the welder, but he never used it. It was all set up temporary.

Q. Well, of course, if he did not use it, that was not your problem, was it?

A. Oh, no, if he didn't use it that wasn't my problem. I didn't care if he never used it.

Q. All your problem was, was to get the thing set up so that it could be used; that is correct, is it not?

A. Yes, and I set them up.

Q. And that you did?

A. Yes, sir.
Q. Is that correct?
A. I set them up, as far as their instructions went.
Q. Well—
A. Now, that job—that piece of paper that you have got there and that job are quite a bit different, if you go down there and look at the job. The job involves a lot of work.
Q. Well, I am not arguing the question with you at all, Mr. Holm.
A. Well—
Q. I have no doubt that it does.
A. Well, I just wanted to explain it.

Q. But does it say anything there about setting up
2815 the machines temporarily, or was the order to simply set up the machines as a permanent proposition?

A. Why, at that time they knew it was going to be temporary. There was no power line in that building at all, not just then.
Q. Well, is it not a fact that some of the machines you set up temporarily, and some of them you did not set up at all?
A. They were all set up and running before I left the plant; they all were.
Q. Before you left, the whole job was completed, is that correct?
A. Not that day.
Q. Well—
A. That job wasn't finished, I don't really believe, until a month after that.
Q. But the order was to the effect that it should be finished over the week end, was it not?
A. Oh, yes; and I had orders down there to building buildings sometimes in twenty-four hours, but I never finished them.
Q. In other words, they were unreasonable requests to make on you, I take it; is that it?
A. Well, at the time they made them, they didn't mean them that way.
Q. Well, now, this order was unreasonable, in view of the equipment, and the condition, I take it, was it?

A. I finished that job out just the way it was sup-
2816 posed to be, Monday morning.

Q. Now, let us not get into an argument, or into any speech making, Mr. Holm. Just answer the question.

A. I did.

Q. No, you have not answered the question. You said you thought the orders were unreasonable—

A. I didn't say I thought they were.

Q. I thought you said—

A. I knew they were.

Q. Oh. You knew that they were unreasonable?

A. Yes, sir.

Q. And you got a number of orders of that kind, where you thought they were unreasonable, did you?

A. Say, Mr., I was no magician.

Q. Well, now, wait a moment, Mr. Holm. I understand that, but just tell me now: You said you got a number of orders that you thought were unreasonable, did you not?

A. Oh, I got hundreds of them.

Q. Hundreds of them?

A. Yes.

Q. That were unreasonable?

A. To a certain extent, at least, they were.

Q. All right.

A. In the time limit.

Q. That is, in your opinion the request made of you
2817 was one that could not reasonably be fulfilled, considering the conditions, and the equipment that you had; is that correct?

A. Well, the time limit was the only thing that was unreasonable about any of them.

Q. The time limit?

A. Yes.

Q. I see. In other words, they insisted, and it became their practice to insist, on jobs being done in less time than it was possible to do them, in your opinion; is that right?

A. No; they were just anxious to have them running; that was all.

Q. But I say, the request was such that you could not carry it out—

A. No.

Q. —as to the time limit?

A. I carried out every order that anybody gave me, for twenty years. I carried them all out, Mr.; don't worry about that.

Q. Well, that is what I am trying to find out, now, Mr. Holm. That is what I want to find out. The only unreasonable thing about the requests, as I understand it, was

the time limit in the requests, and as to that there were a number of them that were unreasonable? I think you said that; is that not right?

A. Well, that is what I said; according to the time.

Q. Yes.

A. (Continuing.) You can tear down a piece of
2818 equipment in an hour, but you can't put it up in any hour.

Q. Now, when you received one of those unreasonable orders, as you say they were, did you ever discuss with Mr. Anselm, or Mr. Henry, the fact that it was unreasonable?

A. I told him right straight out what he was going to get, and he always got it.

Q. In other words, if the order said, "This job is to be finished by Monday morning", and you figured that it could only be half finished, you said "I will have it half finished by Monday morning", did you?

A. I asked them what machines they wanted running Monday morning, and I would have them running.

Q. Suppose they wanted them all running, as in this case, then what?

A. In that case, they had them all running.

Q. I thought you said a little while ago that the job was not completed.

A. I said that they were hooked up temporary. Say, do you know the difference between temporary and permanent?

Q. Never mind what I know, Mr. Witness. You are answering the questions, now, or supposed to be.

The Witness: Let us get a dictionary, then.

Mr. Walsh: Take it easy.

Mr. Keele: All right.

Mr. Walsh: Take your time, Mr. Holm.

2819 Trial Examiner Dudley: Proceed.

Mr. Keele: Mr. Reporter, be sure that the record shows the remarks of the witness.

Q. (By Mr. Keele.) Now, this job that they were always bellyaching about, as I believe you described it: That had to do with insulation in the die polishing department; is that not right?

A. Yes, sir, just a little old shack up on that building.

Q. All right.

A. (Continuing) It was just a question of tacking up a few pieces of celotex on there.

Q. It was just a little old shack up there, is that right?

A. Yes, sir, worth about ten cents.
Q. Worth about ten cents?
A. Yes, sir.
Q. Well, then, there really was not anything important about doing that, was there?
A. Oh, yes, there was.
Q. Well—
A. But there was no emergency to it.
Q. I see. And the order said that there was no emergency to it, did it?
A. There waan't no emergency on any of them.
Q. Well, I was just wondering. Did it say that there was no emergency to the job?
2820 A. They didn't need it; they didn't have to put that on. He knew he was going to get it when I got around to doing it.
Q. I see. In other words, when you got an order, you did the job when you got around to doing it; is that right?
A. Well, jobs like that.
Q. That is when you would do them, when you got around to doing them; is that correct?
A. Emergency jobs?
Q. Answer the question.
A. I done them right away.
Q. I did not ask you that. Just answer the question, please. These orders that you got, I say, you did them when you got around to doing them; is that right?
A. I done them when he let me have enough men to do them.
Q. And you told him that you did not have enough men to do these jobs, when he gave you the orders, did you not?
A. No, I didn't tell him everything.
Q. You did not tell him everything?
A. No.
Q. All right.
A. Why should I?
Q. If you did not have enough men, was it not your business to report to him that you did not have enough men to carry out those orders?
A. I did when I needed more men; I asked for them.
2821 Q. In other words, the only times when you found you needed more men to carry out an order, you asked for them; is that right?
A. Whenever I had a big job, why, I asked for more men, yes.

Q. I say, whenever you needed them; is that right?
A. Yes, sir.
Q. Now, at all other times, then, you did not need more men to carry out those orders, when you did not ask for them; is that correct?
A. I remember one time when I didn't need anybody in the plant; in other words, I was gang, boss, and all.
Q. I understand, Mr. Holm, but, now, just answer the question. Let us not go back 20 or 25 years. I am speaking of this plant. Whenever you needed more men, you called for them; is that correct?
A. Why, certainly.
Q. All right.
A. If I needed more men, I asked for them; certainly.
Q. All right. And the only time you did ask for them was when you needed them, was it?
A. (No answer.)
Q. (Continuing) So that when you did not ask for them, or in cases when you did not need more men to carry out an order, you did not ask for them; is that right?
A. As far as that particular job is concerned, I am 2822 telling you—
Q. No, no; I am talking generally, now. Answer the question.
A. Say, now, Mr. you are going so fast that I can't keep up with you. Ask you question again.
Mr. Keele: Read it, please.
(The question was read.)
The Witness: I don't know what that means.
Mr. Walsh: I believe I will have to object, if the Examiner please, that the question is a little bit involved.
Mr. Keele: All right. Maybe it is a little involved. I will reframe the question.
Q. (By Mr. Keele.) Whenever the job called for more men than you had available, you asked for more men; is that correct?
A. Whenever I got a big job, I used to go out and find out how fast they wanted it.
Q. Yes.
A. And if they wanted it real quick, why, I would ask them if I could have a few more men.
Q. Yes.
A. Well, he would put a time limit on it, and I would say, "Now listen. There is no sense putting on three or four men for a couple of weeks".

Q. Yes?

A. "Well," he says, "if you want to you can work
2823 a little overtime, as long as you get the job done".

Q. Yes. And how many of these jobs that are mentioned in these exhibits did you discuss with Mr. Anselm, with reference to the fact that there was an unreasonable time element involved, or that you did not have enough men; any of them?

A. I discussed every job that you ever saw on a piece of paper with him for twenty years.

Q. With Mr. Anselm?

A. Yes, sir.

Q. Every one of those, you discussed with him, then, did you?

A. If they were in a hurry.

Q. No, no. You said just a moment ago that you discussed every job with him.

A. I said—

Q. Now, do you want to change that answer, to jobs where they were in a hurry; that those were the ones you discussed with him?

A. The reason I discussed them with him was that he would have about five jobs and he would want them all in a row—or I should say, he would lump them, 1, 2, 3, 4, 5; and we would take them in rotation.

2824 Q. I see. Well, now, let us get back to the matter of the insulation. You say that was not important.

A. Which job?

Q. That insulation job in the die polishing department.

A. Well now, you have got the wrong idea about that. The word "important" to me, in a factory, when you are installing machinery—the importance usually is when you are producing a product. When you shut down power, that is an important job; but if it is tacking a picture on the wall, or putting a few pieces of celotex on the wall, that isn't an important job, because it isn't tying up production.

Q. And you used your own judgment as to what was important, and what was not important—

A. Why—

Q. —is that correct?

A. Most of the time he would let me use my own judgment.

Q. I see. Now, there were times when he gave you orders which were to be done by a certain time; that is correct, is it not?

A. Oh—
Q. How?
A. I have got lots of jobs off of him that were to be finished in such-and-such a time.
Q. And did you give those jobs to him finished by the specified time?
2825 A. I gave him every job that he asked for; I never failed him once.
Q. On time?
A. I never failed him yet.
Q. On time?
A. Yes, sir.
Q. You gave him all of his jobs on time?
A. Yes, sir.
Q. All right. So that whenever you got an order—let me get this straight on the record, now. Whenever you got an order specifying a certain time, you always got that job out in the time asked for; now, that is correct, is it?
A. Well, here is the way I gave it to him—
Q. Well now, just answer the question.
A. —if he wants a machine running—
Q. Now, just a moment. Let us make the speeches after a while, Mr. Witness. I want to know if that is a correct statement, that whenever he wanted a job done by a certain time, you got it done by that certain time.
Now, is that correct or not?
A. A certain part of the job.
Q. But not all of it?
A. The job—you are talking about a job, and I am talking about a piece of equipment. A job covers the whole floor.
Q. Well, let us not—
2826 A. (Continuing) The job you have reference to.
Q. Well, let us not have any argument about it. When I refer to a job, I mean by "job", the work that is called for in the order.
A. Well, some of them orders run into quite a lot of work.
Q. And they were unreasonable, were they not?
A. I never failed him on a job down there yet.
Q. Well now—
A. The way you call them unreasonable, yes, they were; they were unreasonable in the time limit.
Q. That is what I mean.

A. Yes.
Q. That part of the order was unreasonable.
A. Well, there is no harm in saying they were unreasonable.
Q. No.
A. And I would usually tell him so.
Q. You would?
A. Yes, of course.
Q. Frequently?
A. How?
Q. Did you tell him that frequently?
A. I worked with the man long enough to tell him that he was crazy. What the heck!
Q. And you thought he was, did you?
A. When I explained to him how long it was going
2826 to take on the job, he would just admit that it couldn't be done.
Q. In other words, he was wrong a good many times, was he not?
A. Well—
Q. And you convinced him that he was.
A. No, he wasn't wrong. He would just write it on a piece of paper, and you can write something out in five minutes, and it may take you a month to finish it.
Q. But, I say, he was wrong a great many times, was he not in figuring the amount of time that he gave you to do a job?
A. Why, in his time limit, I suppose that most of the time he was wrong, nine times out of ten.
Q. I see. All right. Now, how many times did they bellyache to you, as you call it, about this little insulation job?
A. Well—
Q. You said that they were always bellyaching—
Mr. Swiren: The skylight.
Q. (By Mr. Keele.) Or rather, the skylight job. I meant to say, skylight. I beg your pardon.
A. The skylight?
Q. Yes.
A. Did you go down to see that job?
Q. Now, just answer the questions, please, for the purpose of this record. I am questioning you.
A. O. K.
2828 Q. And you can question me after the hearing, if you wish to do so. Let us just keep away from making

speeches, and arguing, and it will make our procedure a little bit more orderly.

The Witness: Can I explain what that job was?

Mr. Keele: No, sir, not now. I have asked you a simple question, and I want you to answer it.

Trial Examiner Dudley: Answer the question, Mr. Holm.

Mr. Walsh: Just answer the question.

The Witness: What is the question?

Q. (By Mr. Keele.) How many times did they bellyache—

Mr. Walsh: Answer the question.

Q. (By Mr. Keele.) How many times did they bellyache to you about that skylight job?

A. Oh, maybe he mentioned it a couple of times, and asked me when I was going to complete it.

Q. Yes.

A. And I showed him why the job was not complete. That particularly job had a power line running through up there on top of the building, and before he could put them boards on there, we had to take that big power line and transfer it underneath the girder, and shut down the plant. The rest of the job didn't amount to nothing, but it meant shutting down the power,—

Q. Did you tell him—

2829 A. (Continuing)—when we got that big two-inch conduit out of there.

Q. Did you tell him about that?

A. Of course. He knew it.

Q. To whom did you tell that?

A. I told it to Henry, Luther Henry, and I showed it to Mr. Anselm. He seen it there.

Q. You did that when you got this order of October the 7th did you?

A. Why—

Q. (Continuing) Respondent's Exhibit 34, mentioned here as job No. 4, "Repair skylight in building 6." Did you tell him about that then?

A. Oh, it was mentioned long before I got that little ticket that you have got there.

Q. I see. Well, can you tell us why, on November the 23rd, a month and a half later, as shown by Respondent's Exhibit 32, the job had not yet been done?

A. Well, at that time we were busy. Now, this was—this building is complete. This here job that you have reference

to, is a complete building. The only time it is a little imperfect is in the wintertime, when the snow banks up there. The roof has been that way. I remember putting it on there, I think sixteen years ago. In the meantime, we got this here ball mill job, and we got this tantalum job, and we had a
2830 big job in the office, outside of the regular repairs; so we just let that job slide along. It wasn't no emergency.

Q. And you used your own judgment, in other words, as to whether or not to do the job immediately, or let it slide along.

A. No. He came around one day there, and I says, "Is it O. K.? I have got to pull the men off. Would it be O. K. to pull them off?"

Q. In other words, you explained to him why you had not done this job?

A. Why, of course, and he knew why it wasn't done.

Q. All right, but you did explain it to him, though, did you?

A. Why, sure.

Q. You told him that that was another one of those mistakes that he had made, did you?

A. He didn't have nothing to do with that.

Q. How?

A. He didn't put that pipe in there.

Q. I see. Well now, referring to this job in Respondent's Exhibit 30-A, that is mentioned in Respondent's Exhibit 30-A, that says: "The two west windows in Contact Department need attention. Either tighten up by caulking, or install a deflector inside, so as to force wind up toward ceiling. Girls are complaining of this location being too cold to work, while the center of the room is far too hot for comfort. This
2831 work to be done at once."

Now, you say that was just a little job, putting a little putty into the windows?

A. I say I never seen that piece of paper before, until I saw it here today.

Q. You never saw it?

A. No, sir. Them little pieces of paper are made out by different departments, different foremen in different departments, or different parts of the factory, and sent over to the office. Sometimes I get them that are date a week and two weeks old.

Q. In other words, that is another instance—

A. They don't come direct to me, but they go over to the office.

Q. That is another instance of managerial efficiency—or rather, inefficiency, is it?

A. Well, I don't know, but if I had got it—if I had been Mr. Anselm, and I had got it, I would have just throwed it into the wastebasket, and called me up, and said to put a little putty in there.

Q. I see.

A. I would know how to deal with it.

Q. Of course in this case, it was not a foreman's order, but this was Mr. Anselm's order, was *it not*?

A. Yes, sir.

2832 Q. And you are sure that you have never seen that?

A. I never seen it until I saw it here today.

Q. Now, you said—

A. I don't even know what the job is, that he is talking about.

Q. Well, did you not tell Mr. Walsh, who was examining you a while ago with reference to that, that it was about a half hour job, just putting a little putty into the windows?

A. I say, from the description here, it must be about a half an hour job to putty up a couple of windows.

Q. I see. And you are quite sure that you never received this?

A. No, I ain't see that before, I will tell you that. I never seen that piece of paper before.

Q. All right. Now, with reference to Respondent's Exhibit 30-B, which says, "Install new rubber ring in dry pipe valve in building 11.": You say that was not an emergency matter, and would not hurt anything in the summertime, the matter of water getting into the sprinkler system.

A. The only time that would be an emergency matter, would be if it happened to break.

Q. Well, the only reason, or the only thing that would cause it to break, would be freezing; is that not right?

A. Yes.

Q. So, being in the summertime, there was no emer-

2833 gency about it; that is correct, is it?

A. There was no emergency on it, in the summertime, no, sir.

Q. I see.

A. The pipe is full of water half the time, in the summertime, anyway.

Q. I see. But, now, since this is dated November the 25th, that would change that somewhat, would it not?

A. That is the time I tried to repair it.

Q. I see.

A. But I couldn't repair it, if he wouldn't shut the system down.

Q. But I say, you told me that a little while ago, or you told Mr. Walsh that on direct, that it would not hurt anything, did you not?

A. It wouldn't hurt anything in the summertime. That is what I said.

Q. Yes, I know, but this was not in the summertime, was it?

A. No.

Q. So that does not apply to this situation, does it?

A. Why, yes it does; it applies the same thing. I can't repair that, if he won't shut it down.

Q. Do you consider that November the 25th is in the summertime?

A. No, it isn't.

Q. All right.

2834 A. But as far as the water that was in there was concerned—

Q. I say, do you consider that as being in the summertime?

A. No.

Q. I just want to get your idea on the record.

A. Oh, no.

Q. All right. So that the fact that it would not hurt anything, as you say, in the summertime, does not have any application to this order, having been given you in November, November the 25th; now, that is correct, is it not?

A. It wouldn't hurt anything in the wintertime either, as long as he said it was O. K.

Q. He said it was O. K., and that was all there was to it?

A. The man who had charge of it, he said it was O. K.; and I says, "All right. Let her go."

Q. And did you then return the order, with a statement to that effect?

A. No, sir. The ring is there yet.

Q. Well, then, will you tell us why you did not do that job.

A. Because he wouldn't give it to me.

Q. You mean Mr. Nelson would not give it to you?

A. Nelson shuts off the water out in the street. When you

repair that, when you fix the sprinkler, he has got charge of that, because it is a very particular job, to clean it out. Every time you shut the system off, and drain it, there is mud, slush, and a little scale comes down there.

2835 Q. I see.

A. And he has to take and wash that all out, and he had to put that little valve back there just perfect, because if he has got a little piece of scale under there, and the air is in there, and the water is in there, if there is one little leak there, why, out goes the air and in comes the water.

Q. I see.

A. (Continuing) Well, he took that out, and cleaned it out after that order went through.

Q. I see.

A. And I asked him to different times; I sent a steamfitter over there; I says, "Go over there and see how it is holding out;" and Nelson says, "It is holding out fine. There is no use repairing it just because a little air might run off, from only a little piece of scale in there." That is hard to clean out, of course. It is a big job, to clean it out properly.

Q. Well now, let us refer to Respondent's Exhibit 30-C, referring to putting a partition in the basement between the cleaning unit and the centerless grinder.

A. Yes.

Q. Now, you said that was just a little partition about sixteen feet long, did you not?

A. Yes.

Q. That little job down there.

2836 A. That is all it was.

Q. There wasn't any emergency about it, was there?

A. There wasn't any emergency about it at all, no, sir. That has been running for over one year.

Q. I see. And that order was given you on September the 4th, 1936; is that correct?

A. Yes, sir.

Q. By February the 26th, 1937, you had not gotten around to doing that job yet; is that correct?

A. February 17th?

Q. What?

A. That job had been done before spring. If you will notice there—

Q. Well, it was not done, though, up to February the 17th, 1937, was it?

A. That is what we call a winter job, an inside job.

Q. I see. And would you consider the months of January and February as being part of the winter?

2837 A. Well, that is still up there. There wasn't any—

Q. Mr. Holm, aside from the speeches, the point is, it was not done on February 17th, was it?

A. Of course, it wasn't done.

Q. All right. Now, the purpose of putting it up there was to prevent fumes from affecting that machinery, was it not,—fumes from the acid?

A. (No answer.)

Q. That is correct, is it not?

A. They have been using acid in that corner for the last ten years.

Q. I understand that, Mr. Holm, but let me suggest to you again, we will get along a whole lot faster if you will just answer my questions, instead of trying to reveal your knowledge of what was going on in the Fansteel Company's plant during your long service there,—and I am impressed with it; but let us answer the questions directly if we can.

Now, I say, the purpose of that was to prevent the fumes from the acid from affecting the machinery; was that not it?

A. Well—

Q. Is that not what you told us a while ago?

A. It was one of the reasons.

Q. Yes.

A. I should judge.

Q. All right. So the more quickly that partition was

2838 put up, the more quickly the action of the acid, or fumes, would be stopped; that is correct, is it not?

A. It wouldn't make no difference.

Q. It would not make any difference?

A. They had the door open half the time, anyway.

Q. I see. In other words, that was another foolish idea of Mr. Anselm's, was it?

A. No, it wasn't. It was all right.

Q. It was all right?

A. The idea was all right.

Q. If they do not open the door.

A. If he had wanted the job to be done in a hurry, it would have been done, but we had about five hundred other jobs at that time, and we didn't pay no attention to a little job like that.

Q. I see. Thank you.

A. (Continuing) That was just simply like making a packing box.

Q. I see. All right. Now, we come to the men's toilet. You said that they were putting in some nice fancy drinking fountains there, as I recall your language; is that what you said?

A. Oh, yes, they put in some dandies.

Q. Some dandy drinking fountains?

A. Yes, sir, and a wash-stand.

2839 Q. Mr. Holm, do you have any antipathy or hostility toward drinking fountains or wash-stands?

A. Yes, I have, the way them boobs put them in, in building number five.

Q. Who were the boobs who put those in?

A. Go down and look at them, the way they put them in there. They installed a nice cool water system there, and they put one in on one floor, and they thought they were going to cool it in the whole building from that.

Q. I have not yet gotten who the boobs were, who put that in building 5.

A. They hired some men on the outside. When they came along with their wash-stand, and drinking fountains, and one thing and another, they bought those units, and a nice thermostatic unit where when you walked up to it and opened it, you got a nice cool drink. Well, they put one of those on the third floor, and then they brought this pipe clean down to the first floor, and thought they were going to get nice cool water down on the first floor, out of that little unit.

Q. That was silly, was it not?

A. No, it was just what I would call a bum job. I didn't do it. I told them they were nuts.

Q. I see. So the whole job, in that instance, was wrong, was it not?

A. Somebody was to blame.

2840 Q. It was another mistake?

A. Yes.

Q. They did not do—

A. Well, they weren't mistaken; they weren't even mechanics.

Q. They did not know?

A. No, they didn't know.

Q. All right.

A. I didn't have anything to do with the drinking fountains. But that is how that little order came through there, on account of the drinking fountains.

Q. All right. Referring now to Respondent's Exhibit 30-D: "Put in larger wash bowl in toilet in building 5, first floor. Remove one toilet and put urinal in this so as to make larger space for washing hands."

Now, there was not any emergency about that job, I take it, was there?

A. No. That couldn't be an emergency.

Q. All right.

A. Because they had been using it it there for about the last ten years.

Q. Now—

A. (Continuing.) Only they wanted a pretty outfit, like they had up stairs; that was all.

Q. They wanted to improve the place?

2841 A. Yes, to modernize it.

Q. To modernize it.

A. Yes, sir.

Q. Are you opposed to that, Mr. Holm?

A. Oh, no, no.

Q. But that was one of the things that the company wanted done, was it not?

A. There wasn't any sense in it.

Q. Well, answer the question.

A. I am opposed to it in one way, I really am opposed to it, yes, sir.

Q. How is that?

A. If they had went out and paid their men a coupie of nickels, instead of spending thousands of dollars for that nutty stuff, they wouldn't have had no trouble at all. That is the reason I am opposed to it.

Q. And that is the reason why you did not put it in, I take it; is that correct?

A. Well, no. The reason I didn't put it in was because we had about four hundred other jobs. That job was just one of those jobs that we do when we get any time.

Q. Is there an understanding about that?

A. Yes, sir, there always has been, that production comes first. That is the only order I ever had.

Q. This job, by the way, was not finished on Feb-

2842 ruary the 17th, was it?

A. I think you have got one there that says the job was finished, but that job wasn't finished.

Q. All right. That is what I want to know.

A. (Continuing.) The one that has got the ink writing on there.

Q. Well, now, let us go on to Respondent's Exhibit 30-E—
A. Why say it is done when it isn't done?
Q. Now, who was this wise stool pigeon, as you described him, who wanted the r. p. m. speeded up from 1825 to 1900?
A. Well, his name is Frank Mack.
Q. Frank Mack?
A. Yes, sir.
Q. Is he an employe of the company?
A. Why, I believe—I think he was a kind of straw boss on the side.
Q. Well, you have characterized him here as a wise stool pigeon.
A. I did.
Q. I wonder if you will just explain to the Trial Examiner what you meant by that?
A. Well, I always figured that he was that. I can tell by looking at a man what he is, and if I work with him for about a week I know what he is.
Q. In other words, you are an expert in personnel 2843 work; is that what we are to understand?
A. To a certain extent with the men I work with, yes, sir. It don't take a man long to know.
Q. And in your opinion Frank Mack is a stool pigeon, and a wise one; is that right?
A. I knew he was. I didn't think he was; I knew he was.
Q. I see. Well, now, how did you know that Frank Mack was a wise stool pigeon?
A. Well, I have got a couple of eyes that can just keep on looking, and he is just simply a nice little straw boss, but he made more trips over to that office I believe than any other man in the plant, and he had no more business over there—not half as much as I did. He was just a little production man in the basement.
Q. In other words, you are sure from that, that he was a stool pigeon?
A. Oh, I knew he was.
Q. Well, now, what do you mean by a stool pigeon? Will you just explain that?
A. Well, that is what I call a piece of humanity that can't go out and make a living in his trade, and he has got to suck two ways.
Q. Now, tell us what you mean by that, that he had to suck two ways?

A. Well, he has got to suck around the man he is
2844 working for, his foreman; and then the first thing you know he slips around and gets hold of that man's foreman.

Q. I see. And Mack did that?

A. Oh, plenty.

Q. I take it that you do not like Mr. Mack.

A. Oh, I had no grudge against him.

Q. You did not have any grudge?

A. No.

Q. The fact that he was a wise stool pigeon, as you have characterized him—

A. Oh, that is just my opinion. My opinion is a certain way. This is a free country, you know, and I have got a right to my opinion.

Q. You do not like him, do you?

A. I never had nothing to do with him.

Q. Did that fact, the fact that he had made that recommendation, have anything to do with the fact that you did not do this job between the 1st day of September and the 17th day of February, 1937?

A. I will tell you why, Mister. That little job that you have reference to is a little grinding wheel that they have been using for about nineteen or twenty years, the same process that they are using today. He asked me if it would make any difference, to make it go faster. I says, "The wheel guarantees so much r. p. m., and if we can find
2845 another pulley, we will put it on". But you aren't allowed to run an emery wheel, except up to the limit that is printed on the wheel, and I don't set up nutty machinery.

Q. And speeding that up, would in your opinion have made it nutty machinery; is that right?

A. Well, if it happened to kill a man, they would want to know who speeded it up.

Q. But if you had gotten an order to do that, that would have relieved you from any responsibility, would it not?

A. That order wouldn't mean nothing.

Q. It would not?

A. I wouldn't want to kill a man, just because he put it on, that I should kill a man, would I?

Q. Well, I do not know. Would you?

A. No.

Q. I see. Well, I am glad to know that. In other words,

you felt that this order was just not in line with good practice, and safe practice, with reference to the speeding up of an emery wheel; is that right?

A. All that really amounts to was a little experimental stuff. He didn't know what it was going to do if I made it go a little faster, and I didn't know what was going to happen. He didn't know, neither did I. I says, "We will have to get a pulley that maybe will be a quarter of an inch larger in diameter"—because you can't go over the limit shown
2846 on the wheel. All emery wheels have got their r. p. m. stamped right on them.

Q. And if they run faster than that they are apt to explode from centrifugal force; is that right?

A. They go right through a man. Did you ever see one go right through a man, right through his guts?

Q. No, I have never had that dubious pleasure.

A. Well, it is too bad. You ought to be around the plant once in a while.

Mr. Walsh: Let us not get into any argument.

Mr. Keele: That is all right. I do not have the slightest objection to the remarks of the witness.

Mr. Walsh: I am just cautioning the witness.

Q. (By Mr. Keele.) Now, referring to the order set forth in Respondent's Exhibit 30-F: "Six braces or supports for water jackets of furnaces."

Now, you say that those were just small pieces of metal; is that right?

A. Yes.

Q. You did not have those?

A. No, I didn't make them; the tool room makes them.

Q. All right. And did you ask anybody—did you ask Mr. Dow to have those braces made for you, or did you go to the tool room and ask that they be made?

A. Those pieces of metal I think have been in those
2847 furnaces for over three months. I can't prove it, but I am pretty sure that they were, because the man who repairs the furnaces—I told him to go up in the tool room, and get them, where they belong. They are just three little strips, that is all they are, to hold up an end. He used a couple of bricks in place of them. We haven't got no blacksmith shop in the millwright departemnt.

Q. I see. And did you take the proper steps to get them?

A. Oh, yes.

Q. To get those braces made?

A. Yes, sir. I told him to go and get them.
Q. You told who to go and get them?
A. The man who used them.
Q. Well, who was that? The order is signed by Mr. Dow. Who did you tell to go and get them?
A. Harold Stricklen.
Q. Stricklen?
A. Yes, sir, he is the man who used them.
Q. That is not Stricklen's department, though, is it?
A. Stricklen is the man who wanted those straps.
Q. I see.
A. Because he is the man who uses them.
Q. And where did he go to get them?
A. He went up to the tool room to get them.
Q. I see.
2848 A. That is where they make them. That is where the made them before.
Q. I see. And that is the reason why this job was not done, is it?
A. I just didn't pay no more attention to it, because it wasn't my job.
Trial Examiner Dudley: Off the record a moment, Mr. Reporter
(Discussion outside the record.)
Q. (By Mr. Keele.) I take it, Mr. Holm, that your attitude in the plant was about the same as you have indicated here; is that correct?
A. What do you mean?
Q. Well, I am just asking you the question, if the attitude you had during the course of your work in the plant, was the same as the attitude that you have shown here on the witness stand, in your answers.
You are not nervous today, or upset, or anything, are you? Just answer that yes or no, please.
A. Wouldn't you get tough if somebody shot you a bunch of scrap like you have got there?
Q. Well—
Mr. Walsh: Just answer the question, Mr. Holm.
The Witness: I am trying to answer the question as nearly as I know how. I am not telling you a lie, Mister. You
2849 don't need to worry. I am not going to tell you a lie
Mr. Keele: I never thought for a moment you were, Mr. Holm.

Q. (By Trial Examiner Dudley.) Can you answer the question yes or no, Mr. Holm?

A. What is the question?

Q. The question is, are you nervous today, or not?

A. Not any more than I would be any other day, no, sir.

Mr. Keele: That is all.

Redirect Examination.

Q. (By Mr. Walsh.) Mr. Holm, you are no more nervous than you would be under a searching cross-examination by counsel, I take it?

A. No. That is, I am nervous, to a certain extent, yes, sir, because—

Q. I mean you are not used to being on the witness stand, are you?

A. No, sir, I am not. It isn't very often that I get up here, and its a good thing I don't.

Mr. Walsh: I think that is all.

2850 *Recross Examination.*

Q. (By Mr. Keele.) Well now, Mr. Holm, jut let me get straight on this. I have not been abusive toward you, or unfair toward you in any of my questions, have I?

A. Oh, no, you are just trying to earn your dough, Mister, the same as I am trying to earn mine.

Mr. Keele: All right.

Trial Examiner Dudley: I think the record speaks for itself. That is sufficient.

Mr. Walsh: Nothing further.

Mr. Swiren: I would say it is more than enough

Mr. Keele: I have nothing further.

(Witness excused.)

Mr. Walsh: The extent to which the cross-examination has gone, if the Examiner please, will not permit me to close my case tonight.

Trial Examiner Dudley: We will take a short recess.

(Whereupon a short recess was taken.)

Trial Examiner Dudley: The hearing will come to order.

Mr. Walsh: Frances Fellens.

FRANCES FELLENS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Frances Fellens?

2851 A. Yes, sir.

Q. You have been previously sworn, and testified in this proceeding?

A. Yes, sir.

Q. You worked in the Contact Department?

A. Yes, sir.

Q. What was your job?

A. Well, I set up contact points on breaker-arms mostly.

Q. How long did you work in that department?

A. Two years.

Q. Daring that period of time did Mary Aitchison ever complain about the quality of your work?

A. Who?

Mr. Swiren: You mean Mary Atkinson.

A. No, sir.

Mr. Walsh: Oh, pardon me.

Q. (By Mr. Walsh.) Did Mary Atkinson ever complain about the quality of your work?

A. It was Elsie Aigner.

Q. Well now, let us get started all over again. You did not work for Mary Atkinson at all, did you?

A. No, sir.

Q. You worked for Elsie Aigner, is that right?

A. Yes, sir.

Q. All right. Now, during the time that you were

2852 working there, did you work on piecework most of the time?

A. Mostly.

Q. Did she every try you out on hourly work in recent months, say?

A. Well, when—like if we didn't have breaker-arms to work on, she would give me special jobs, and my job would only last maybe an hour, or something like that.

Q. In other words, jobs on which you would not have time enough to work up any speed.

A. No, sir. You couldn't get much of a chance to work up on the other job.

Q. Do you know whether your production on a piecework basis was as good as that of the other girls in the department?

A. As far as I know, it was.

Q. Did she ever complain to you about the character of the work you were doing?

A. No, sir.

Q. I will ask you whether or not you ever agitated any trouble around the department?

A. No, sir.

Q. Or anything like that.

A. No, sir. not that I know of. I don't know of any trouble that I ever caused.

Q. Did Elsie know that you were a member of the union?

A. I kind of think she did, yes.

2853 Q. Did you ever talk with her about it?

A. No, sir, I didn't. At the time when they had the notice around, that they wanted to start a company union, and I hesitated about signing my name to it—

Q. Yes?

A. (Continuing). She seemed—well, she made some kind of a remark, so I thought she knew I belonged to the other union.

Q. About how often would you get those special jobs that you would work at for an hour or so?

A. Oh, not very often. I worked on breaker-arms just about all the time I was there.

Mr. Walsh: You may examine.

Mr. Keele: No cross.

Trial Examiner Dudley: That is all; thank you very much. (Witness excused.)

Mr. Walsh: Marguerite Seifert.

MARGUERITE SEIFERT, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Marguerite Seifert?

A. Yes, sir.

Q. You have been previously sworn, and testified in this proceeding?

2854 A. Yes, sir.
Q. I believe you worked for Mary Atkinson, did you?
A. Yes, sir.
Q. What did you do?
A. Well, we did inspecting of disks.
Q. I will ask you whether Mary Atkinson ever complained to you about the manner in which you did your work.
A. No, sir, she never complained to me about it.
Q. Did she ever say anything to you about it?
A. No, sir, only there was one night we were working overtime, and she was telling us we couldn't work overtime any more; and there was quite a bit of work in there, so we wanted to know why it as; and she said that they had complaints coming over about two of the girls who were falling down, or not cooperating enough, in what they were supposed to put out; and one was Mary Lacey, who went back to work.
Q. One was Mary Lacey, who went back to work after the trouble?
A. Yes, sir.
Q. I will ask you whether she was a better worker than you were.
A. Well, I don't know, only Mary complained about her a lot of times.
Q. About Mary Lacey?
A. Yes.
2855 Q. But she took her back to work?
A. Yes, sir.
Q. You have always been on an hourly basis, have you?
A. Yes, sir, I have always been on an hourly basis.
Mr. Walsh: You may inquire.

Cross-Examination.

Q. (By Mr. Keele.) Miss Seifert—or is it Mrs.?
A. Miss.
Q. Miss Seifert, were you here yesterday afternoon?
A. No, I wasn't.
Q. When Mr. White was testifying?
A. No.
Q. Did you hear Mr. White—or rather, pardon me, Jimmy Brown.
A. No, I didn't.
Q. All right. Did you hear Jimmy Brown testify?

A. No, I didn't, but he was the one that got me the job down there.

Q. How is that?

A. He got me the job down there.

Q. He got you the job down at Fansteel?

A. Yes, he did.

Q. He is friendly toward you in other words, is he not?

A. Well, I don't know.

Q. Well, I mean, you wanted that job down there, 2856 did you not, when he got it for you?

A. Yes. I asked him about a job, and he says he would see if he could get me on.

Q. He was the one that got you the job?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And you have not had any quarrel with him since, have you?

A. No, sir.

Q. So that he would have no reason to want to hurt you in any way in his testimony, would he?

A. Not that I know of.

Mr. Keele: No. That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: That is all; thank you.

(Witness excused.)

Mr. Walsh: If the Examiner please, I move that the hearing adjourn at this time until tomorrow morning.

Trial Examiner Dudley: We will adjourn at this time until tomorrow morning at 10 o'clock.

(Whereupon, at 4:45 P. M., Thursday, June 24, 1937, adjourned until Friday, June 25th, 1937, at 10 o'clock, A. M., in Room No. 4, Post Office Building, Waukegan, Illinois.)

2860 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Room 4, United States Post Office,
Waukegan, Illinois.
Friday, June 25, 1937.

The above-entitled matter came on for further hearing, at 9:30 o'clock-A. M., pursuant to adjournment.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, and Sidney H. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

2861 Trial Examiner Dudley: I will call the hearing to order.

Mr. Swiren: I want to state for the record that I have delivered to the Examiner a memorandum giving the information he requested with respect to the number of employees not working on February 17th, who were hired on the reopening of the plant.

Mr. Walsh: Do you want this introduced in evidence?

Trial Examiner Dudley: Yes. Let us put it in.

Mr. Walsh: I will offer it in evidence.

Mr. Swiren: Let us have it marked.

Mr. Walsh: That will be Board's Exhibit No. 40.

(The document referred to was thereupon marked Board's Exhibit No. 40 for identification.)

Mr. Swiren: We object to the admission of Board's Ex-

hibit No. 40 on the ground it has no materiality to the issues in this case.

Trial Examiner Dudley: You do not object to it on the ground of accuracy?

Mr. Swiren: What is that?

Trial Examiner Dudley: You do not object to it on the ground of accuracy?

Mr. Swiren: It is accurate.

Trial Examiner Dudley: It may be admitted.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 40.)

2862 Mr. Walsh: This is a renewal of your application. Has it been introduced?

Mr. Swiren: We presented our renewal of application to the Examiner.

Mr. Walsh: If you are relying on it as error, it has to be in the record.

Mr. Swiren: No pleadings have to be in the record.

Mr. Walsh: Yes. They have to be in the record in this proceeding, in order to take advantage of error, if any.

Mr. Swiren: All right. We will offer it as a Respondent's Exhibit.

Mr. Walsh: No. It will be offered as a Board's Exhibit.

Mr. Swiren: All right.

Mr. Walsh: I offer this as Board's Exhibit 1-P, if the Examiner please.

Trial Examiner Dudley: It may be admitted.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT 1-P.)

Mr. Swiren: I ask leave of the Examiner to recall Mr. Kondrath for further cross-examination along the line of the subject matter of yesterday's cross-examination, some additional information with respect to that subject matter having reached me since then.

Mr. Walsh: The subject matter of what?

Mr. Swiren: His testimony yesterday.

2863 Mr. Walsh: Kondrath's testimony?

Mr. Swiren: Yes.

Mr. Walsh: All right. Take the stand, Mr. Kondrath.

JOHN A. KONDRATH, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Cross-Examination (Continued).

Q. (By M. Swiren.) Mr. Kondrath, you testified yesterday either late in August or beginning in September you examined and counted the time clock cards in buildings 3 and 5, is that right?

A. That is correct.

Q. Can you tell us now whether you recall whether it was the set of cards for the last half of August, or the set of cards for the first half of September that you counted?

A. I couldn't recall that.

Q. Look at this batch of cards I hand you for the half month ending September 15th, 1936, and see if those are the cards you look at.

A. Well, now, the way I counted them, they were in the rack, and I counted one, two, three, four, and so forth. That is the only way I can tell you. I didn't look at the cards.

Q. You did not look at the cards?

A. No, I did not take them out and examine them or anything.

Q. The date is right up on top, is it not?

2864 A. It would be if it faces this way (indicating).

Q. So, you do not know whether it was the August cards you looked at or the September cards?

A. No. I wouldn't know whether it was August or September.

Q. If I told you that the number of cards in the rack on September 10th, 1936 was 206—or rather, in these two racks—would you say I was wrong?

A. In September?

Q. On September 10th.

A. Well, on September 10th it might have been.

Q. It might have been 206?

A. It might have been.

Q. If it were about three or four more than on September 21st, you would not say I was wrong, would you?

A. No.

Q. You did not count the cards on those two dates?

A. No. I only counted the cards the one time.

Q. You do not know whether that was the first part of September or the last part of August?

A. I really don't remember.

Q. Then, you took 20 people off as people that you regarded as foremen, is that right?

A. Yes.

Q. You took all of the people off that you found on the list, who were authorized to requisition supplies, is that right?

2865 A. No, I didn't.

Q. You did not take them?

A. That came out later. When I counted the cards—whether it was before or later, I don't remember.

Q. The list came out later?

A. I don't remember that. It has been quite a long time ago. All I know is I counted the cards in both racks on both clocks and the total amount was 181.

In my knowledge, thinking who were foremen at that time, and I knew who were giving orders in the shop, I deducted them from the total amount of the cards.

Q. You told us yesterday that you determined who were foremen by looking at the list posted in building 9 and building 6.

A. Building 6, in the stock room.

Q. Mr. Streed had posted a notice there as to who was entitled to requisition supplies, had he not?

A. That is correct.

Q. Those people are the people you deducted, is that right?

A. Well, I really didn't think of that particular list at that time. As I named off the names yesterday, that is how I took it, my knowledge—I knew who were bosses, considered bosses.

Q. I understood yesterday that you got the names of the foremen from the list that was posted in building 6.

A. I said I have seen the list on the window of the
2866 stock room, but I didn't say I deducted them particular people. Some I did.

Q. And if you said yesterday, if the record were to show that you said you deducted the names of those who appeared on the list, then your testimony was in error, is that right?

Your testimony was in error, if that is what you said?

A. I didn't testify that I took all the names off that list, that particular notice. To my knowledge, I knew the foremen in the plant. I don't believe I took Frank Mack at the time.

Q. He is not a foreman. He is a straw boss.
A. He may be. I don't know what he is.
Q. So you did not include him?
A. I included those people I named yesterday.
Q. Art Holm said he was a straw boss, but you said you did not consider him as a foreman. Did you include him, or did you not?
A. I did include Art Holm as a boss, because he was a boss as far as I knew.
Q. How about Frank Mack?
A. I don't believe I included him.
Q. You did not include him?
A. I included Jimmy White, and people that I knew for a long time, that have been giving orders in certain departments.
Q. You do not know whether they had a right to hire and fire, or whether they were on an hourly basis or a
2867 monthly basis; anybody you thought was giving orders, you deducted?
A. Yes. I considered them as bosses.
Q. You considered those people as bosses and you deducted them?
A. Absolutely.
Q. You did not ask anyone whether they were given any authority to hire or fire, or whether they were regarded as foremen by the Company?
A. No, I didn't, because as far as hiring and firing, I don't know who was doing it. Most of the time it was done by the superintendent, or from the office more or less.
It wasn't done by the men, the foremen in the plant.
Q. You do not know which foremen did have the power to hire and fire, at any rate, do you?
A. No.
Q. Or, which bosses, as you put it?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh.) At any of the meetings at which the negotiating committee talked with Mr. Anselm, on September 10th, September 21st or February 17th, did Mr. Anselm ever ask you to prove whether you represented a majority of the men in the plant?

2868 A. No, he didn't.

Q. He never furnished you with a payroll list of the company so you could check to find out whether you represented a majority, did he?

A. No, sir.

Mr. Walsh: That is all.

Mr. Swiren: Just a moment.

Recross Examination.

Q. (By Mr. Swiren.) As a matter of fact, at those conferences you did not discuss how many members you had or how many employees there were in the plant.

That was not a subject of discussion, was it?

A. There were some things said about it. It wasn't really about the exact total of employees, or to make us prove we had a majority, but as far as we knew—

Q. Just a second. I do not want to know what you knew. What was said at those conferences? You did not say anything about that at the conferences, did you? That is what I am talking about. He did not say anything to you about it, did he?

A. I believe the first time when we went in, in July, Mr. Aitchison had asked me—

Q. No; never mind. I am talking about September.

A. September 10th?

Q. Yes.

A. I don't believe there was anything mentioned
2869 about the majority, but I imagine they probably knew we did.

Mr. Swiren: I do not want your imagination. I move that the imagination of the witness be stricken from the record.

Trial Examiner Dudley: Let is stand, since you have it in.

Q. (By Mr. Swiren.) You did not say anything to Anselm, and Anselm did not say anything to you—that is what I am talking about—at that conference?

A. About a majority—

Q. Yes.

A. —of the membership?

Q. Yes. That was not talked about, was it?

A. Well, Mr. Anselm asked me at the time, on September 10th, what would I think if he would get 40 or 50 members out of my union—

Q. No, no. That is a simple question, and I want a simple answer.

Mr. Swiren: I do not think you understood my question. Read the question, Mr. Reporter.

(The question was read.)

Q. (By Mr. Swiren.) (Continuing.) About the question of majority; that was not talked about either by you or by Mr. Anselm, was it?

A. Well, I don't remember making any particular statement about having a majority or minority.

2870 Mr. Swiren: That is all.

Mr. Walsh: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: Mr. Du Bois.

RAYMOND E. DU BOIS, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) State you full name, please.

A. Raymond E. Du Bois.

Q. You have been previously sworn and have testified here before have you not, Mr. Du Bois?

A. I have.

Q. I believe while you were employed at Fansteel, the latter part of your service was under Mr. Groll, is that right?

A. Yes.

Q. Mr. Groll testified here the other day.

A. Yes.

Q. I would like to ask you if Mr. Groll knew whether you were a member of lodge 66.

A. He must have, because I told him.

Q. Did you talk to him about it from time to time?

A. Oh, yes.

Q. Did you have any connection—withdraw that.

2871 I will ask you if you were steward in the tool room.

A. I was.

Q. You were the union steward in the tool room, is that right?

A. Yes, sir.

Q. In connection with that work did you from time to time have an opportunity to talk to Mr. Groll about various things in the department?

A. Sometimes for an hour, or an hour and a half at a time.

Q. He would come to you, would he, and talk with you, and discuss these matters?

A. Yes, he would.

Q. What would the discussion be about?

A. Well, he felt that the fellows in there were laying down on the job, and to try to cooperate with him I would tell him, "Mr. Groll, if you would let these fellows do these things to the best of their ability and knowledge from the past, probably we could get together and help you out." But he thought we was being stubborn, that is all, and wouldn't cooperate.

Q. Had he had any previous experience in the working of tungsten or molybdenum or any of the other metals you were working with?

Mr. Swiren: That is objected to unless this witness was with him all of his life. I do not know how he could tell.

2872 Trial Examiner Dudley: He may answer if he knows.

The Witness: The only way I would know would be what he said, that he was a tool maker.

Q. (By Mr. Walsh.) Did he ever say he had had experience in these metals?

A. No, he didn't.

Q. Did he ever say he had never had any experience in these metals?

A. Well, not that I recollect directly, no.

Q. Did you at any time talk with Mr. Anselm about Mr. Groll?

A. I did.

Q. Tell us what that talk was about.

Mr. Swiren: Fix the time and place, if you can.

Q. (By Mr. Walsh.) Tell us about when it was and where it was, what was said by you and what was said by Mr. Anselm.

A. Truthfully, I can't say the time, because I don't recollect it.

Q. Well, it was some time in the fall of 1936; it must have been after November, 1936?

A. Yes, it was.

Q. It was after November 16th, 1936, and it was before February 17th, 1937, was it not?

A. It was.

Q. Some time during that period you did talk with Mr. Anselm about Mr. Groll, is that right?

2873 A. I did.

Q. All right. Tell us just what the conversation was about.

A. There was one time that Mr. Groll came to me, and we had had tongue lashings between us, arguments of one description and another. At this particular time he came to me, and he says, "What are you doing there?" Well, Howard Philips had given me the job—

Q. Howard Philips was who?

A. He was boss in the tantalum department prior to Jack Welch.

Q. I see.

A. That is before Mr. Welch took the job as foreman back in the tantalum department.

Q. Go ahead.

A. At this time Howard Philips was supposed to be a mechanical engineer, or something of that title. I don't know just what the title was.

Well, they wanted some new pulmotors made for downstairs. These machines are machines that are made to pull this tungsten rod through the furnace, as they anneal and swage it.

They gave me a description of the roller, which was taken off a pattern of one of the old ones, only they told me they wanted the rollers made larger this time, so they wouldn't have to revolve so fast, and it would pull the rod a little bit faster, in order to speed up production.

2874 I started to make it. He came over to me and says, "What are you doing?" I says, "Well, I am doing this job you wanted me to do for Mr. Philips." He asked me about blueprints. Well, one thing led on another, and I told him, "Mr. Groll, if you want me to work with blueprints, it is your job to get them."

Well, it made him sore. I told him I couldn't help it, that I was trying to do what they wanted me to do to the best of my ability. One thing led on another, and I went over to Mr. Anselm to offer to quit, but I thought that was what they wanted me to do; so I just didn't quit.

I just told Mr. Anselm the circumstances in the tool room, the way things was carried out, and the way Mr. Groll was acting. We couldn't cooperate with him, because he wouldn't

give us an opportunity. It was just getting worse for us instead of better, and worse for the company.

So Mr. Anselm did not give me very much credit for coming over, I suppose, because he thought I wanted to be a stool pigeon, or something like that, and tell him the troubles, and pack stories about foremen.

I din't like the idea myself, but we didn't have recognition of the union, and the boys were asking me a lot of questions, and bringing these things back to the union, and we couldn't do anything about it.

So I just naturally told the boys, "Do as you see fit
2875 about these problems that come up."

That was by me. I couldn't help anything. So it wasn't long then until Mr. Groll came up. I was working on the drill press at that time, drilling some holes in the castings of this little piece of machinery.

He came up and tapped me on the shoulder, and he says, "Frenchy, forget it. Let's start all over again." So I considered that that was the end of it.

I wanted to get along with him, because I like to keep my job the same as anybody else.

Mr. Walsh: That is all. You may cross-examine.

Cross-Examination.

Q. (By Mr. Block.) Mr. Du Bois, these various conversations that you had with Mr. Groll and Mr. Anselm took place over what period of time, approximately?

I do not mean exact dates; they began when, and continued up to what time, would you say, to the best of your knowledge?

A. Well, they started from the time that Mr. Groll got there, or a couple of days afterwards, until the strike. That is all I can tell you. I don't know the dates.

Q. Can you give us some idea of the months; would it be from September, or before that time in 1936?

A. It must have been after the middle of November some time.

Q. It would be then from the middle of November, 1936, up to February 17th, 1937?

2876 A. Yes.

Q. Is that right?

A. Yes.

Q. These various discussions that you had with Mr. Groll were in the plant, I take it?

A. They were.
Q. In the course of the working operations of the plant?
A. They were.
Q. Is that right?
A. Yes.
Q. That is also true of the conversation with Mr. Anselm?
A. Yes.
Q. Is that correct?
A. That is right.
Q. After you had these various talks, you went back to work?
A. Yes.
Q. Mr. Groll said to you, "Well, Frenchy"—I think that is what you said; that is your nickname, I suppose?
A. Yes.
Q. He said, "Forget it"?
A. Yes.
Q. "Let us try and get along"?
A. Yes.
Q. Or something like that?
A. Yes.
2877 Q. When he told you that, he already knew you were a member of this union?
A. Yes.
Q. He knew you were a member of lodge 66?
A. I had told him.
Q. He had known for a long time, had he not?
A. I think so.
Q. From the time those discussions started until February 17th, were you ever asked to leave the employment of the Fansteel Metallurgical Corporation?
A. No.
Q. Up to February 17th, 1937, were you laid off?
A. No.
Q. Were you discharged up to that time?
A. No.
Q. Up to February 17th, 1937?
A. No, sir.
Mr. Block: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
(Witness excused.)
Mr. Walsh: Frank Moxey.

FRANK MOXEY, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

2878 *Direct Examination.*

Q. (By Mr. Walsh.) Your name is Frank Moxey?
A. Yes.
Q. You have been previously sworn, and have testified, have you not, Mr. Moxey?
A. Yes.
Q. I believe you were employed by the Fansteel Company for 24 years?
A. 21.
Q. 21 years?
A. Yes.
Q. What was the work that you were doing—withdraw that.
What job did you have under Mr. Groll, the foreman who testified here the other day?
A. I had a number of jobs. The main job was making heading dies, and inspecting michrometers, and gauges, cutting gauges and other jobs, small jobs.
I don't know just what you would call them.
Q. Did he from time to time try to change the method of working this material you were working on?
A. No. He didn't bother me in that way, only on some jobs I had to make—
Q. On some jobs?
A. He thought I could draw those tubes different, instead of the way I was making them.
2879 Q. The tubes were made of—what metal were you using?
A. Molybdenum.
Q. Molybdenum?
A. Yes.
Q. He wanted you to draw the tubes in a certain way, did he?
A. He did not want me to do—well, he said he thought I should do it better.
Q. Did you have any arguments about it with him?
A. No.
Q. Did you demonstrate to him it could not be done?

A. No. I don't think we had any argument about it.
Q. Did Mr. Groll state whether he had ever had any experience in working in tungsten or molybdenum?
A. No, he did not.
Q. Do you know whether he had any experience previously, in working these metals?
A. I don't know.
Q. Did you ever see him talking with Mr. Du Bois?
A. Yes, I have.
Q. Did you know what they were talking about?
A. Well, I knew they was having an argument.
Q. I see.
A. That is all I know.
Q. Those arguments lasted for some time, did they?
A. Well, quite a little; sometimes maybe an hour.
2880 Mr. Walsh: I see. You may inquire.
Mr. Block: That is all.
Mr. Walsh: That is all.
Trial Examiner Dudley: You may be excused.
Mr. Walsh: Evelyn Graimer.

EVELYN GRAIMER, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Evelyn Graimer?
A. Yes.
Q. You have been previously sworn, and have testified in this hearing?
A. Yes.
Q. You worked at the Fansteel Company under the supervision of Elsie Aigner, I believe, is that right?
A. Yes.
Q. I will ask you whether or not—I believe Mrs. Aigner testified you worked in a team down there; is that correct?
A. Yes.
Q. While you were there, you worked in a team?
A. Yes, We did.
Q. Did you work in a team all the time?
A. No, I never, not all the time.
Q. Did you work on piece work or hourly work?

2881 A. I worked on both, mostly piece work.
Q. Mostly piece work?
A. Yes.
Q. During the time that you were there, did you keep a record of the piece work that you did?
A. Yes.
Q. How did you keep that record?
A. Well, every day we wrote down what we done.
Q. For what reason did you write it down?
A. So we could check up on what we made, and refer back to the work.
Q. Was it a custom for the girls working in that department to keep such a record?
A. It was, for piece workers.
Q. For the piece workers?
A. Yes.
Q. Have you, during the time that you worked at the Fansteel Company kept such a record?
A. I have.
Q. That is for all of the piece work that you did, is that right?
A. Just about.
Q. I will ask you if from time to time officials of the company made inquiry or talked to you about the record you kept?
2882 A. Well, the foremen would, if they wanted to look anything up, to see if you done it the day before.
Q. They would ask you to refer to your records, would they?
A. Yes.
Q. Why would they do that?
A. Well, if the cards had already gone through, there may have been a few days after, that they wanted to see if they had so many set up. They would ask the girls if they had set them up.
Q. Rather than go to the office and check the records over there, they would inquire of the girls in the department how many of a certain number of parts had been made in the last few days, for instance?
A. Yes.
Q. Is that right?
A. Yes.
Q. Do you have your record with you?
A. Yes.

Q. May I see it, please?
A. Yes. (Handing document to counsel.)
Q. Does this record reflect—or, does this record tell whether you were working in a team or working individually, Miss Graimer?
A. No, but during that time this girl was out. She had been out.
2883 Q. The person with whom you normally teamed was out over what period would you say, about?
A. I think she was out three or four weeks before the strike.
Q. Three or four weeks before the strike?
A. Yes.
Q. Then your record of three or four weeks probably preceding February 17th, would be a record of your individual work?
A. Yes.
Q. Is that right?
A. Yes.
Q. Will you look through your records here beginning with January 4th, 1937, and tell me how many days there were upon which you worked on an hourly rate, and how many days there were upon which you worked on day work.
A. There was four days that I had a few hours each day, on day work.
Q. What were those days?
A. On January 11th I had five hours; January 12th, I had one and two-tenths hours; January 13th I had 8 hours; January 14th I had 8 hours.
You see, we worked more hours that days. We worked ten hours.
Q. I see. Then you had, on the last day—you worked eight hours at straight time?
A. At day work.
2884 Q. And the balance of the time you worked on piece work, is that right?
A. Yes.
Q. Now, it was only on those four days that you did any hourly work, is that right?
A. Yes. I think that is right.
Q. Now, your record book from January 4th to February 16th will reflect the amount of work that you did on a piece work basis, will it not?
A. Yes.

Mr. Walsh: I would like to have that portion of it. I would like to introduce it in evidence.

Q. (By Mr. Walsh) I will ask you if on February 11th, you worked alone?

A. I worked alone.

Q. Tell us what you did on that day.

A. I set up 45 jigs, 1094's. That was four nine hours.

Q. Did you work alone on February 12th?

A. Yes.

Q. What did you do that day?

A. I set up 45 jigs, 1094's that day.

Q. During this time the person with whom you normally worked was out?

A. Yes.

Q. Is that right?

2885 A. Yes.

Q. She was out during this time.

A. Yes.

Mr. Walsh: I would like to offer in evidence that portion of her book from January 4th until the time the trouble broke out.

Can you take that out, or can you tear it out?

The Witness: You can tear it out.

Mr. Walsh: Let us tear it out. Let us take out those several pages, so I can offer it as an exhibit.

The Witness: All right.

Mr. Walsh: Mr. Reporter, will you mark this Board's Exhibit No. 41, sub-letters A to F both inclusive.

(The document referred to was thereupon marked Board's Exhibit No. 41-A to F both inclusive.)

Mr. Walsh: I would like to offer that in evidence, if the Examiner please.

Mr. Swiren: That is all right.

Trial Examiner Dudley: No objection?

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be admitted.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 41-A TO F.)

Mr. Walsh: You may inquire.

Cross-Examination.

2886 Q. (By Mr. Keele) Miss Graimer, is this record your record of all the work that you did from December 29th to February 16th?

A. I believe it is all there.

Q. What?

A. I believe it is all the work.

Q. All the work that you did?

A. Yes.

Q. That is not only piece work?

A. What?

Q. This is not a record merely of the piece work?

A. No. It is all the work I did. I have marked the hours of day work.

Q. In other words, this accurately reflects all the work that you did?

A. I believe it does.

Q. You know, do you not?

A. Yes.

Q. You made it.

A. Yes.

Q. Tell us how piece work is shown here, and how hourly work is shown.

A. On day work, I have marked "day work" there. All that is not marked "day work", is piece work.

Q. Everything that is not marked "day work" is piece work?

A. Yes.

2887 Q. On the day work, it does not show, does it, how much you accomplished, or does it, here?

A. No, it does not.

Q. It just shows eight hours of day work?

A. Yes.

Q. Some days you did day work and piece work—

A. Yes.

Q. —did you not?

A. Yes.

Q. For instance, I will pick out January 11th, where it says you had five hours of day work, and twelve jigs of 1217. I assume the remainder of the day except for that five hours was spent—

A. On piece work.

Q. —on piece work?
A. Yes.
Mr. Keele: That is all.
Mr. Walsh: Just a moment.

Redirect Examination.

Q. (By Mr. Walsh) What was the standard amount of piece work that was done on part 1094 per day.
A. The most the oldest girls done was 5 an hour.
Q. 5 an hour?
A. 40 a day for eight hours.
Q. I believe your record shows that on February
2888 11th, you did 45?
A. That was for nine hours.
Q. For nine hours?
A. Yes.
Q. So that was the same as all of the rest of the girls?
A. Just the same.
Q. Now, with reference to the other parts that are shown, of which there are several upon which you worked, did you do as much as any other girl in the department, or were there some girls better than you were?
A. I think I done as much.
Q. You think you did as much?
A. Yes.
Q. However, the company's records would show whether you did as much or more than the other girls?
A. Yes.
Q. If they compared the record that you have kept with the records of what the other girls did, it would show whether you were more or less efficient—
A. Yes.
Q. —than the other girls, is that right?
A. Yes.
Q. Did you ever have any arguments with the forelady in your department?
A. No, I never did.
2889 Q. Did she ever criticize the manner in which you did your work?
A. No.
Q. Or the amount that you turned out?
A. No.

Mr. Walsh: That is all.

Mr. Keele: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: At this time, Mr. Examiner, I would like to introduce in evidence as BOARD'S EXHIBIT NO. 42, the by-laws of the Rare Metals Workers of America, local No. 1, Lake County, Illinois.

Mr. Swiren: No objection.

Trial Examiner Dudley: It may be admitted.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 42.)

Mr. Walsh: At this time I wish to introduce as BOARD'S EXHIBIT NO. 43 the opinion of the court in the Circuit Court of Lake County, in the case entitled "Fansteel Metallurgical Corporation, plaintiff, *versus* Lodge 66 of the Amalgamated Association of Iron, Steel & Tin Workers of North American, et al., respondents," Gen. No. 37551.

Mr. Keele: That is objected to.

Mr. Walsh: Just a moment.

2890 Mr. Block: We object to that.

Mr. Walsh: Just a minute, please.

Mr. Block: Oh, I am sorry.

Mr. Walsh: This document bears the certificate of Albert P. McDermott, official reporter of the Circuit Court of Lake County, Illinois, certifying this document is a portion of the record in that case.

I will offer it in evidence.

Mr. Swiren: We object. The law is perfectly clear in the State of Illinois, as a matter of fact, as evidenced by the Supreme Court of the United States, that remarks of a chancellor are not binding on the parties, and form no part of the proceeding; that the binding force lies entirely in the decrees and orders, and that the remarks themselves, whether expressed in a formal opinion or informal opinion or otherwise, are not binding on any of the parties.

They are not part of the record, having no basis for consideration in any appeal, or any other proceeding in connection therewith. If the Examiner has the slightest doubt on the subject, I am prepared to cite full authorities both of the Supreme Court of Illinois, and of the Supreme Court of the United States.

Mr. Block has a further objection that he would like to add.

Mr. Block: Does that exhibit contain the judgment
2891 order, or the decree of the court in that case?

Mr. Walsh: I do not believe it does. I think it is just the opinion of the court.

Mr. Block: Then it is certainly objectionable. If it is your theory that the judgment of that court is competent on some point in this case, certainly the judgment would control, but to offer merely something the judge said, or that the chancellor said which formed the basis of the opinion in his later judgment, which you cannot question in this case, and which involves entirely different issues, is clearly, I think, an attempt to encumber and confuse this record.

It does not have any bearing. What difference does it make as to what he said? What bearing would it have on this case? We ought to proceed with some regularity here. We have some rules, I hope.

Mr. Walsh: Of course, counsel,—

Mr. Block: If you are going to offer that, I suppose we could likewise go on, and select other things to offer, and the first thing you know, we will not be trying this case; we will be trying some other lawsuit, which is as foreign to this case as England is to this country.

It certainly has no bearing, on any issue, any conceivable issue.

Mr. Walsh: Mr. Block.

Mr. Block: Yes.

2892 Mr. Walsh: You are the one who first introduced the judgment and order.

Mr. Block: Yes. Now then, if you want to offer something concerning that judgment, very well.

Mr. Walsh: You, of course, are familiar, Mr. Block, with the rule in the Federal Court that it is necessary to have the decision of the court, the opinion of the court in the Appellate record.

Mr. Block: We are trying this lawsuit. The issues here are clearly defined. You want to introduce some remarks of the court without giving us a chance to go back and try that case again.

Trial Examiner Dudley: I might say that when respondeit introduced the order and the decree as exhibits 3 and 4, and I believe made some motions based upon them, I ruled that the order and decree or findings of the court, the Circuit Court of Lake County, were not binding upon the Board. They were admitted for such bearing as they might have.

I believe you also have copies of writs, injunctions and so forth which have been introduced. Those likewise were allowed to be admitted in evidence for such bearing as they might have.

In no case are they binding upon this Board, either as to findings of facts or rulings of law, because the issues are different, and we have no jurisdiction to or desire to attempt to retry the case which was tried in the Circuit Court.

2893 That is none of our business at all. However, if any of its findings or opinions can help, I suppose we should have the advantage of them. I will admit this, and I will admit anything else you want to introduce. You can bring in testimony—

Mr. Block: How can something which the court said in another case be competent on any question here?

Trial Examiner Dudley: Probably his opinion is—

Mr. Block: Is that the real purpose of it?

Trial Examiner Dudley: (Continuing)—just as important as his order and decision.

Mr. Block: That is not binding.

Trial Examiner Dudley: None of them are binding.

Mr. Swiren: I thing the Examiner has overlooked this proposition: in the first place, there has been a contention here that these men violated an injunction.

Trial Examiner Dudley: That contention has not been made before this Board.

Mr. Swiren: Yes.

Trial Examiner Dudley: Well, you are—

Mr. Swiren: That contention has been made before this Board.

Trial Examiner Dudley: That, of course—

Mr. Swiren: That was establisher by the pleadings and the orders, and those pleadings and those orders are

2894 binding upon the respondent and one of the other parties to this proceeding.

Now, he presents a piece of paper containing remarks that are not binding on anybody. The order and the decree were binding and still are binding on both of these parties. The Supreme Court of the State of Illinois has held, and the Supreme Court of the United States has held that the remarks of the chancellor have nothing to do with the case, and are not binding on anybody, and form no part of the record.

Mr. Block: Why not offer clippings from the newspapers on the subject?

Mr. Swiren: There must be some good editorials we can offer.

Mr. Block: There must be some limitation to the evidence you will receive, and the evidence you will reject.

Trial Examiner Dudley: I will admit it subject to your objection.

Mr. Block: Exception.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 43.)

Trial Examiner Dudley: You may proceed.

Mr. Walsh: May we have a short recess?

Trial Examiner Dudley: Yes. We will take a short recess at this time.

(Whereupon a short recess was taken.)

2895 Trial Examiner Dudley: I will call the hearing to order.

Mr. Walsh: Mr. Examiner, a day or two ago you made some inquiry as to the efforts that were made to mediate the dispute while the men were occupying the buildings, or during the trouble, during the time the trouble was going on.

Counsel and I have from time to time discussed a stipulation that might properly reflect those efforts, but we have not been able yet to arrive at a basis upon which we could stipulate.

I thought for the purpose of showing what those facts were, I would introduce some testimony at this time.

I would like to call Mr. Meyer Adelman back to the stand.

Trial Examiner Dudley: Very well.

MEYER ADELMAN, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Meyer Adelman?
A. Yes.
Q. You have previously been sworn—
A. Yes.
Q. —and have testified in this case?
A. Yes.

Q. Talk up so the reporter can hear you.

A. Yes.

2896 Q. You have claimed your privilege under the statute, I believe.

A. That is right.

Q. Mr. Adelman, directing your attention to the period of time between February 17th and February 26th, 1937, I will ask you whether you made any efforts on behalf of lodge 66 to mediate the dispute that was then in existence between the company and the lodge.

A. I did.

Mr. Swiren: That is objected to. I do not see that it makes any difference whether he made any efforts to mediate any dispute or not.

The problem was whether the men had unlawfully seized the buildings and were holding them unlawfully.

Trial Examiner Dudley: Objection overruled.

Mr. Swiren: If it has something to do with their intention to withdraw from the buildings, that might be something different.

Trial Examiner Dudley: Objection overruled.

The Witness: What was the question?

Mr. Walsh: Read the question.

(The question was read.)

A. I did.

Q. (By Mr. Walsh.) Will you tell us, Mr. Adelman, what you did in an effort to mediate the dispute.

2897 Mr. Swiren: We object, unless it is confined to conversations with the respondent. What he may have done with other people is not pertinent.

Trial Examiner Dudley: Or respondent's agents.

Mr. Swiren: Or respondent's agents, yes.

Trial Examiner Dudley: Proceed.

The Witness: I enlisted the aid of the state and federal departments of labor respectively.

Q. (By Mr. Walsh.) Which one did you enlist first?

A. Well, the federal department of labor first appeared on the horizon.

Q. Did you talk with the federal conciliator?

A. I did.

Q. Who was that?

A. Commissioner Pilkington.

Q. Did you discuss the general problem with him?

A. I did.

Q. What did he say to you, and what did you say to him?

Mr. Swiren: That is objected to. Mr. Pilkington was not a representative of the respondent. There is no evidence of any communication either through Mr. Pilkington or otherwise to this respondent or its agents.

He ought to confine his testimony to communications with the respondent and its agents, as the Examiner suggested.

Trial Examiner Dudley: Well, what I am interested
2898 inp rimarily are conversations had, or approaches made to the respondent, by the union.

I believe we had better allow this to go in, and see what develops out of it. If it is not relevant, we will disregard it.

Mr. Block: If it is not competent, why should it go in? You would not permit the introduction of evidence of what I may have said to somebody else in connection with it, to bind this man.

It is so elementary, I do not see why the record should be cluttered up with it, testimony that is so clearly and obviously incompetent.

Suppose I went to somebody and talked about it. Suppose I talked to somebody on the street about it. Suppose I talked to 100 people about it. Unless it was somebody who could be construed as an agent of the respondent, or unless you could show that that was communicated to the respondent or some agent of the respondent, it would not be competent in any court.

Trial Examiner Dudley: The testimony itself may develop that he made proposals to Mr. Pilkington, which Mr. Pilkington in turn made to the respondent.

Mr. Block: How can he tell that?

Trial Examiner Dudley: Let us see whether he can or not.

Mr. Block: You ought to find out, before you go
2899 into it.

Trial Examiner Dudley: I will admit it.

Mr. Block: Exception.

Mr. Walsh: Read the question.

(The question was read.)

Mr. Swiren: What was the date of that? Let us have the date.

Q. (By Mr. Walsh.) About what time was this, do you remember, when Mr. Pilkington came on the scene?

A. Probably on the 19th of February.

Q. The 19th of February?

A. Yes.

Q. Was that before or after the first gas attack?

A. I cannot recollect exactly.

Q. All right. Tell us what transpired between you and the repesentative of the department of labor, Mr. Pilkington.

A. I asked Mr. Pilkington to contact the management in our behalf and see if he could bring us together for a conference.

Q. Do you know whether Mr. Pilkington did contact the management?

A. He did.

Mr. Keele: May we for the purpose of the record have an objection shown to each and every question and answer along this line?

Mr. Swiren: There is an additional objection. Un-
2900 less this witness was present and knows, and can testify to whom Pilkington talked, and what he said, it is certainly not competent.

Trial Examiner Dudley: Objection to the entire line of testimony is noted.

Mr. Block: There is one other additional objection. It is a well known fact that mediators cannot function if they give full information to both sides. What they do is try to wring concessions, ordinarily, if they are negotiating between parties.

What they did in this case ought to be brought out by the persons who were there. We ought not to speculate.

Trial Examiner Dudley: Objection overruled. The objection is noted, and overruled.

Mr. Walsh: Read the question.

(The question was read.)

A. He did.

Q. (By Mr. Walsh.) Did Mr. Pilkington bring you any statement from the management?

A. He did.

Q. What was the message brought from the management by Mr. Pilkington to you?

Mr. Block: Well now, I suppose that is competent. That is objected to.

Trial Examiner Dudley: The objection is noted to
2901 the entire line of testimony.

Mr. Block: What?

Trial Examiner Dudley: The objection is noted to the entire line of testimony.

Mr. Block: This is something additional, if the Examiner please.

Mr. Walsh: Mr. Banker is not in court this morning, is he?

Mr. Swiren: What is that?

Mr. Keele: Mr. Banker is not in court this morning, is he?

Mr. Swiren: We will arrange to get him for you. He must be talking to some policeman down on the corner.

Mr. Walsh: It is too bad he is not here, so you can all object.

Mr. Keele: I am sure, with the impartiality which is being shown in this case—

Trial Examiner Dudley: Read the question.

Mr. Keele: I am sure that with the impartiality which is being shown in this case, the efforts of perhaps hundreds of lawyers would be unavailing.

There cannot be any doubt as to the basis, and the substantial basis of these objections.

Mr. Block: At least we still have a right to make an objection, I hope.

Mr. Keele: I think so.

2902 Mr. Block: We have, up to this point, anyway.

Trial Examiner Dudley: I will ask counsel to refrain from making speeches.

Mr. Walsh: I beg your pardon for starting all this.

Trial Examiner Dudley: Read the question.

(The question was read.)

A. Well, he said that so far they are unwilling to meet, but he was going to continue to try.

Q. (By Mr. Walsh.) To your knowledge did he make any other efforts to get the management to meet with you?

A. Oh, yes. He did.

Q. What did those efforts develop?

A. Well, it developed no meeting.

Q. I beg your pardon?

A. It developed no meeting.

Q. It developed no meeting?

A. No.

Q. From time to time did Mr. Pilkington report to you the position of the management on this question of mediation?

A. One time Mr. Pilkington—

Mr. Swiren: That question calls for a yes or no answer, it seems to me. He either did or did not.

Trial Examiner Dudley: Read the question.

(The question was read.)

A. Yes.

2903 Q. (By Mr. Walsh) What did Mr. Pilkington report?

A. He reported that the company would agree to meet some of the sitdowners only as ex-employees, not as members of the union, or as a committee of the union; just as ex-employees.

Q. Did you yourself make any efforts to meet with the management to discuss this question of mediation?

A. That was the only way I could make an effort. There was an injunction there. I couldn't go to the plant.

Q. So you worked entirely through the offices of the department of labor of the United States—

A. Yes.

Q. —is that right?

A. Yes, and the state department of labor.

Q. Who appeared on the scene from the state department of labor?

A. The director of labor, and his assistant, and one more conciliator.

Q. Did you discuss the problem with the state department of labor?

A. I did.

Q. What efforts if any were made on the part of the Illinois State Department of Labor to mediate this dispute?

A. Well, the Illinois Department of Labor immediately sort of got together with the government conciliators.

Q. With the government conciliators?

2904 A. Yes.

Q. Talk a little louder.

A. All right. The government conciliator, and at that time another conciliator came in, Mr. O'Connor, for the government.

Q. By "the government", you mean the United States government, is that right?

A. The United States government, that is right. Jointly they were trying to adjust the proposition, and the meeting switched to the City of Springfield.

Q. That is the capitol of the State of Illinois?

A. The capitol of the State of Illinois.

Q. At whose request did the meeting move from Waukegan, Illinois to Springfield, Illinois?

A. At the request of the director of labor of the State of Illinois.

Q. Did you have some further meetings with the conciliators in Springfield, Illinois?

A. I did, with the state conciliators, and the governor.

Q. The governor of the State of Illinois?

A. That is right.

Q. The governor is Henry Horner, is that correct?

A. That is correct.

Q. What transpired at those meetings with the state department of labor, yourself, and the governor?

A. Well, I presented the case of the union before the
2905 governor and asked him if he would try to bring the company and us together.

Q. Do you know whether representatives of the Fansteel Company were in Springfield?

A. Yes, I do know that representatives of the Fansteel Company were in Springfield.

Q. Did you see any of them there?

A. No.

Q. Did someone tell you they were present in Springfield?

A. Yes.

Q. Who told you they were present?

A. The governor did.

Q. Did the management ever meet with you and the state department of labor while you were in Springfield?

A. No. They refused to.

Mr. Block: We move that the latter part of the answer be stricken.

Mr. Walsh: Did they ever—

Mr. Block: Pardon me just a moment, Mr. Walsh.

Mr. Walsh: Pardon me.

Trial Examiner Dudley: I will let it stand. We will consider all of the testimony when he gets through.

Proceed.

Q. (By Mr. Walsh.) Was the governor successful in bringing about a meeting between yourself and the rep-
2906 resentatives of the management of the Fansteel Company?

A. No, sir.

Q. Was the meeting in Springfield—withdraw that.

After the meeting in Springfield, did you return to Waukegan?

A. Yes, sir.

Q. Were there other efforts made to meet the management after your return from Springfield?

A. There were no other efforts made, because the company had assured the governor there would be sort of a truce—they called it a truce—

Mr. Block: I object to that and move to strike it out.

The Witness: (Continuing) —that they would not try to evict—

Mr. Block: Just a minute.

Mr. Walsh: Just a moment. I believe Mr. Block wants to make an objection.

Mr. Block: He has answered the question. The rest is voluntary, and it is obviously pure hearsay.

Trial Examiner Dudley: Let him answer, so he can get his entire line of testimony in.

Q. (By Mr. Walsh.) How many times, or over what period of time did these various meetings and negotiations occur?

A. They went on right along.

Q. That is, practically from the time—

2907 A. From the time—

Q. —Mr. Pilkington arrived?

A. That is right.

Q. You fixed that date I believe as the 19th of February?

A. I believe so. It probably was the 18th, the evening of the 18th or something like that.

Q. From the time Mr. Pilkington came onto the scene, until—

A. The next day the state man came in.

Q. The state man arrived one day after Mr. Pilkington?

A. Yes.

Q. Is that right?

A. It was not very far apart.

Q. These various attempts to negotiate with the company were going on during the period from February 18th or 19th—

A. Yes.

Q. (Continuing.) —until the time at which the men were forced from the plant, is that correct?

A. That is right.

Mr. Walsh: You may inquire,—no. I have just one more question.

Mr. Swiren: Go ahead.

Q. (By Mr. Walsh.) Mr. Adelman, do you know of any efforts by local or municipal officials of either Waukegan or North Chicago to attempt to mediate this dispute?

A. Oh. yes.

2908 Q. What were those, and who participated in those efforts?

A. The mayor of North Chicago participated.

Q. What was his name?

A. Mayor Brommey.

Q. Do you know what his efforts were?

A. They were along the same line. He worked with the conciliators very hard.

Q. Did his efforts result in meetings between yourself as a representative of the lodge, and the management of the company?

A. No.

Mr. Walsh: You may inquire.

Mr. Keele: We move to strike this entire testimony. We move to strike the entire testimony of this witness on the ground that he has not in any way established any conversation that took place between himself and the representatives of the company, nor any conversation at which he was present between the company and anybody else.

He has stated only what was said to him by someone who told him that somebody told them that somebody told them that such-and-such was the case. It is about the most flagrant violation of the hearsay rule that we have had, and there is no guarantee here as to the accuracy or authenticity of the statements that have been repeated into the record by this witness.

It gives us no opportunity to cross examine the men

2909 who are alleged to have made these statements, and has no more bearing on the issues here than if the witness had testified he talked to George the newspaper boy down here on the corner, and George had talked to the governor and the governor had told him so-and-so.

There is absolutely no materiality, and no possibility of counsel examining the persons who are supposed to have made these statements.

Trial Examiner Dudley: Mr. Keele, let me ask Mr. Adelman a few questions.

Mr. Keele: All right.

Examination by Trial Examiner Dudley.

Q. (By Trial Examiner Dudley.) Mr. Adelman, did you ever talk with Mr. Aitchison, Mr. Anself, Mr. Swiren, or any other agents of the Fansteel Company?

A. I did.

Q. During the course of the strike?

A. No, not during the course of the strike.

Q. That is, you did not talk with them between February 16th and February 26th?

A. No.

Q. Did you ever send to them any written statements or offers of settlement of the strike during that time?

A. No, sir.

Q. Did you ever send to them any oral word, or em-
2910 issaries or other negotiators and so forth such as Pilkington, and the people about whom you have just testified?

A. No, sir.

Q. Do you know whether or not—strike that out. You were on the outside of the buildings during the entire time of the strike, were you?

A. That is right.

Q. Do you know whether or not any of the other members of the union discussed with any of the representatives of the Fansteel Company the question of settling the strike?

A. You mean, during the period—

Q. From February 16th to February 26th.

A. No, sir.

Q. Do you know whether or not the men in the buildings had any conversations with representatives of the Fansteel Company during that time?

A. I do not know, sir.

Q. Then the testimony you have given here largely consists of the fact that you have made representations to Mr. Pilkington and to other mediators and conciliators—

A. That is right.

Q. —expressing the desire of yourself and of the union—

A. That is right.

Q. —to get along with the company?

A. Yes.

2911 Q. And there were no results from those suggestions that you made?

A. No. You see, the reason I could not go there was because there was an injunction. I couldn't go near them.

Trial Examiner Dudley: Well, I will allow his testimony to stand, his testimony only as to the fact he did make suggestions to mediators, and as a result got no response; but not as to direct testimony of what the company did. The company then can put on witnesses if it wishes as to what it said, or as to the position it took, so there will be no misunderstanding of its position in the matter.

Mr. Block: That is the very objection to this line of testimony.

Trial Examiner Dudley: This at least shows the position that the union took. It does not show the position that the company took.

Mr. Block: The position that the company took—

Trial Examiner Dudley: It is not hearsay, as far as the position of the union is concerned. It is direct evidence on that.

Mr. Swiren: What is the difference what position they took? When they seize your buildings and violate an injunction, which is what occurred, whether he had any conversation with Mr. Pilkington, or did not have any conversation with Mr. Pilkington, or whether he talked to the
2912 governor or anybody else, does not change that.

Trial Examiner Dudley: That depends upon the premise. I would like to ask you another question, Mr. Adelman.

The Witness: All right.

Q. (By Trial Examiner Dudley.) In your conversations with Mr. Pilkington and other mediators and conciliators, did you make any definite proposals, or did you ask him to convey any definite proposals to the company as to the terms or conditions upon which you would, and the union would get out of the buildings?

A. The question never came up about getting out of the buildings or staying in there. There was never a question there.

Q. They never asked you—

A. No.

Q. (Continuing)—"What do you want to get out of the buildings?"

A. No.

Q. And you never made any offer?

A. It was not necessary. We were ready to go to work. We were only protesting in the buildings.

Mr. Block: I move to strike that out.

Mr. Walsh: It may go out.

Q. (By Trial Examiner Dudley.) Were you living in the community of Waukegan or North Chicago on the 16th
2913 or 17th of February when this started?

A. Yes. I was in and out, so to speak.

Q. Were you here on the 17th?

A. Yes.

Q. Did you know that the men were going to visit Mr. Anselm on the morning of the 17th?

A. I did.

Q. Did you receive word during the day as to what the results of that conference were?

A. No. I was not here during the day. I left in the morning for Milwaukee. I returned about 9 o'clock in the evening.

Q. About 9 o'clock?

A. Somewhere around there.

Q. So you were not here during the day time on February 17th, just the early morning and evening?

A. That is right.

Q. When you returned in the evening, you received reports as to what had happened during the day, I suppose?

A. Why, I received a call when I called in at the office in Milwaukee. They had a message for me that the plant was shut down. That is the message I had. That is really the only message I had, that the plant was shut down.

Q. I see.

A. I immediately made arrangements to come right back.

Trial Examiner Dudley: I will allow his testimony
2914 to stand as evidence of the position on which the company took towards the mediators, without binding the company as to the position which it took.

Mr. Keele: Do we understand that the questions you asked stand, but the testimony as to what somebody told him will also stand? I am referring to those statements that were made in response to Mr. Walsh's questions as to what somebody told him somebody had said with reference to what the company's position was.

Trial Examiner Dudley: I will allow it to stand not as evidence as to what the company said or did, or as to the position which the company took, but merely as evidence that

Mr. Adelman, acting as agent for the union, took the position in conferring with mediators and so forth, that they wanted to get together with the company, but actually they never did get together with the company.

As I see it, that is the summation of his testimony.

Mr. Keele: Exception.

Trial Examiner Dudley: An exception is noted.

Mr. Keele: The motion to strike it is denied, I take it?

Trial Examiner Dudley: Yes.

Mr. Keele: Exception.

Mr. Swiren: Our motion stands to all of the testimony.

Trial Examiner Dudley: All of Mr. Adelman's testimony.

Mr. Swiren: I am referring to the testimony before
2915 the inquiries made by the Examiner. It includes all the testimony.

Trial Examiner Dudley: I understand your motion includes all the testimony given by Mr. Adelman this morning.

Mr. Swiren: All right.

Mr. Block: Are you through?

Mr. Walsh: That is all.

Mr. Block: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Walsh: At this time, Mr. Examiner, I desire to renew my offer of each one of the several exhibits that may have inadvertently been left out of the record.

I would like to offer each one separately, and offer them all collectively for the record at this time, in order that no exhibit that has been marked for identification will be inadvertently left out of the record. I do that, so it will all be before the Examiner.

Mr. Swiren: We would like to have the record show the same objections.

Mr. Walsh: The same objections by counsel will stand to that offer, of course.

Trial Examiner Dudley: The offer is noted. The exhibits are admitted in evidence.

Mr. Walsh: Very well.

2916 Trial Examiner Dudley: I suggest that we take the time to check all the exhibits before we leave, to be sure they are all here.

Mr. Walsh: I think we should also.

Trial Examiner Dudley: Have you anything further?

Mr. Walsh: At this time I desire to rest my case.

Mr. Swiren: In order that we may be certain that all of our exhibits are received, we desire to offer Respondent's Exhibits Nos. 1 and 2, and Respondent's Exhibits Nos. 5 to 42 both inclusive. Of course, they are subject to the same objections that Mr. Walsh noted. I take it they may be admitted on that basis, Mr. Examiner.

Trial Examiner Dudley: They may be admitted.

Mr. Swiren: Respondent's Exhibits 5, 6 and 42 we are now offering for the first time. They were not separately offered, according to my recollection.

Trial Examiner Dudley: You are offering for the first time Exhibits 5, 6 and 42?

Mr. Swiren: That is my understanding. There may be some others offered for the first time, or there may not.

Trial Examiner Dudley: Let us have it quiet in the room, please.

Mr. Walsh: I have no objection to exhibits 5 and 6. I would object to Exhibit 42.

Trial Examiner Dudley: Respondent's Exhibits 5, 2917 6 and 42 may be admitted in evidence at this time.

(The documents referred to were thereupon received in evidence and marked RESPONDENT'S EXHIBITS NO. 5, 6 and 42.

Mr. Walsh: Let the record show that Respondent's Exhibit No. 42 has been withdrawn by the Board. A photostatic copy will be supplied for the record.

Trial Examiner Dudley: You may proceed.

Mr. Swiren: I would like to recall Mr. Brown.

Trial Examiner Dudley: Very well.

JAMES BROWN, recalled as a witness for the Respondent, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Swiren.) You have been sworn, and have testified before?

A. Yes.

Q. Your name is James Brown?

A. Yes.

Q. You are cost clerk for the Fansteel Metallurgical Corporation—

A. Yes.

Q. —and have been for some years?
A. That is right.
Q. Are you familiar with the cards that hourly workmen punch in the clocks each day?
2918 A. Yes, sir.
Q. At the plant?
A. Yes, sir.
Q. Have you produced the cards that were in the racks adjoining the clocks in buildings 3 and 5 during the first half of September, 1936?
A. Yes, sir.
Q. You have those here?
A. Right there.
Q. These are the original cards, are they?
A. Those are the original cards.
Q. Have you counted those cards?
A. Yes, I have.
Q. What is the total of all of the cards that were in these racks for the period from the 1st to the 15th of September, 1936?
A. 207.
Q. 207?
A. Yes.
Q. That does not include, I take it, laboratory workers that worked on production?
A. No.
Q. They are in an entirely separate building?
A. Yes.
Q. They have their own clocks?
2919 A. Yes.
Q. Have segregated from these the foremen?
A. Yes.
Q. How many are there of those?
A. 11.
Q. Have you also your payroll sheets for the production workers during that period?
A. Yes, sir.
Q. Those show the same count?
A. Those show the same count.
Mr. Walsh: Just a minute. There are 11—off the record.
(Discussion outside the record.)
Q. (By Mr. Swiren.) The 11 foremen were not deducted from your 207, were they?
A. No.

Q. 207 was the gross amount—
A. That is right.
Q. —of all the cards?
A. That is right.
Q. You have the same type of cards for the second half of September, have you not?
A. Yes, sir.
Q. Those are the cards that were on the racks from the 16th to the 30th of September, is that right?
2220 A. That is right.
Q. How many cards are there of those?
A. 208.
Q. How many of the 208 are foremen's cards?
A. 11.
Q. Your payroll sheets for that period are also here available?
A. Yes, sir.
Q. Each card represents a man at work during that period, is that right?
A. That is right.
Q. As I understand it, those cards represent the men employed in production and maintenance?
A. Yes.
Q. Is that right?
A. Yes.
Q. It does not include clerical help?
A. No.
Q. Or supervisory help?
A. No.
Q. Such as foremen, or plant superintendents—
A. No.
Q. —or officers of the company?
A. No, sir.

Mr. Swiren: I will state for the benefit of counsel
2221 and the Examiner with respect to the summaries given by the witness, that the original records are here in the hearing room available for inspection by any of the parties.

Trial Examiner Dudley: You are not offering them in evidence?

Mr. Swiren: I do not think we want to offer them in evidence. They are very bulky. As you perhaps know, the law in our state has for many years been to permit summaries of bulky evidence, where the original records are in the hearing room.

Mr. Keele: Just a minute, Mr. Swiren.

(Discussion outside the record.)

Mr. Swiren: Mr. Keele suggests that we offer these cards in evidence.

Trial Examiner Dudley: I am not asking for them. I do not care.

Mr. Keele: I think it would be better if we put them in the record.

Mr. Block: We can substitute a list.

Trial Examiner Dudley: You can substitute a list, the same as was done with the union membership cards.

Mr. Swiren: Perhaps we had better have these marked. The first group here will be Respondent's Exhibit No. 43. This one will be Respondent's Exhibit No. 44. This one will be Respondent's Exhibit No. 45, and this will be Respondent's Exhibit No. 46.

2922 (The documents referred to were thereupon marked Respondent's Exhibits Nos. 43, 44, 45 and 46.)

Q. (By Mr. Swiren.) Referring again to the cards that you have just summarized for us, Respondent's Exhibit No. 43 contains all of the cards from the 1st to the 15th of September excluding foremen—

A. Yes.

Q. —is that right?

A. Yes.

Q. Respondent's Exhibit 44 is the same group of cards only so far as foremen are concerned?

A. That is right.

Q. What is the total of the group contained in Respondent's Exhibit No. 43? How many cards are there?

A. 196.

Q. Those are the production—

A. That is right.

Q. —and maintenance employees?

A. That is right.

Q. How many cards are there in Exhibit 44?

A. 11.

Q. Those are the foremen's cards?

A. Yes.

Q. Now, Respondent's Exhibit No. 45 contains production and maintenance employees cards for the last half of February—

2923 A. September.

Q. —September, 1936, and total how many?

A. 197.

Q. Respondent's Exhibit No. 46 containing cards of the foremen for the same period totals how many?

A. 11.

Q. Those are the foremen's cards?

A. Yes, sir.

Mr. Swiren: We offer RESPONDENT'S EXHIBITS NOS. 43, 44, 45 and 46 in evidence, if the Examiner please.

Mr. Walsh: May I reserve my objection until we have an opportunity to check the cards?

Mr. Swiren: May we have leave to withdraw those cards and substitute a list, so it will not encumber the record?

Mr. Walsh: There will be no objection to that. I want to reserve my objection.

Q. (By Mr. Swiren.) Now, can you tell us from those cards, the production employees on September 10th, the production and maintenance employees on September 10th other than foremen?

Trial Examiner Dudley: Just a moment. I do not know whether I quite understood your last question. Read the question please, Mr. Reporter.

(The question was read.)

A. 196.

Q. (By Mr. Swiren.) On September 21st how many were there?

2924 A. 197.

Q. Do those figures include production employees working out of the laboratory?

A. No, sir.

Mr. Swiren: That is all.

Mr. Walsh: Mr. Examiner, it is very close to 12 o'clock. I would like to examine these cards some time before I go into cross-examination of Mr. Brown.

I may find some reason why I should object to the introduction of these cards. If so, I want to have it in the record. I would like to examine these cards first, and I suggest that we adjourn at this time so I can look them over.

Mr. Swiren: We have another witness. We will bring Mr. Brown back for cross-examination after lunch, if you do not mind.

Mr. Walsh: That is fine. Go ahead.

Mr. Swiren: You may go for the time being, Mr. Brown.

(Witness withdrawn.)

Mr. Keele: Mr. Aitchison.

ROBERT J. AITCHISON, recalled as a witness for the Respondent, being previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Keele.) Your name is Robert J. Aitchison?

A. Yes, sir.

2925 Q. You have been previously sworn and have testified in this case, have you not?

A. Yes.

Q. Were you present at this hearing when a man named John Fay Harris testified about having sent a letter to the Fansteel Company addressed to you with reference to some gratuitous offer of his to act as a mediator or something of that nature?

A. No, I was not here at that time.

Q. Did you see a copy of that letter which was introduced in evidence?

A. No.

Mr. Keele: May I see that?

Mr. Swiren: Here it is (handing document to counsel).

Q. (By Mr. Keele.) I show you Board's Exhibit No. 29. I will ask you to read that exhibit.

A. I have read it now.

Q. I will ask you whether or not you ever received any communication which was an original of that, or which contained the matter contained in that exhibit.

A. I did not.

Q. Did you ever hear of John Fay Harris before?

A. No, sir.

Q. Do you know who he is, or did you know who he was, as to his position?

Did you know there was such a position as held by him?

2926 A. I did not.

Q. Now, was there—

A. It does not say in here what he is.

Q. Was there an order outstanding at the Fansteel Company from the 17th day of February, which is still in effect, that any communication with reference to sitdown strikes should be delivered directly to your desk?

A. They all go to my desk. I have instructed them to send them to my desk.

Q. Have you heard of anyone receiving such a letter at the company?

A. No.

Q. Did you ever receive any letter from Harris, John Fay Harris, or John F. Harris?

A. No. I do not remember of ever having received any letter from him of any kind.

Q. Did you ever hear of anyone connected with the company having a letter from John F. Harris, or John Fay Harris?

A. I never discussed with anybody any letter from him on any subject.

Mr. Keele: That is all.

Mr. Walsh: No cross-examination.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Trial Examiner Dudley: We will take a short recess.

2927 (Whereupon a short recess was taken.)

Trial Examiner Dudley: For the record, I would like to call your attention to the fact that we have in the files Respondent's amendment to the answer which is noted as "Filed", with no exhibit number.

Mr. Walsh: Mr. Examiner, at this time I move to file as part of Board's Exhibit No. 1, the amendment to the answer of the respondent in this case, which will take Exhibit No. 1-Q.

Trial Examiner Dudley: It may be admitted.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 1-Q.)

Trial Examiner Dudley: We will adjourn at this time. We will recess for lunch, and reconvene here at 2 P. M. this afternoon.

(Thereupon, at 12 o'clock, Noon, a recess was taken to 2 o'clock, P. M.)

After Recess.

(The hearing was resumed at 2:00 o'clock, P. M. pursuant to the taking of recess.)

Trial Examiner Dudley: Come to order, gentlemen. You may proceed.

Mr. Swiren: I will recall Mr. Brown for another question or two on direct, if there is no objection.

Trial Examiner Dudley: The witness may be recalled.

JAMES BROWN, resumed the stand, being previously
2928 duly sworn, testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Swiren.) I think you told me during recess and told Mr. Walsh that the number of cards you stated as making up Exhibit No. 43 was incorrect.

A. Yes.

Q. Is that right?

A. Yes.

Q. What should that number be?

A. It should be 195.

Q. There are only 194 cards here, are there not?

A. There are only 194 cards. One man does not punch on that type of card.

Q. He punches on a different clock?

A. He punches on a different clock, and punches a different style card.

Q. You do not have that one here?

A. No.

Q. Who is he?

A. John Petz.

Q. What does he do?

A. He is janitor.

Q. The testimony before was 196. It should be—

A. 195.

Q. —195?

2929 A. That is right.

Trial Examiner Dudley: One card from the 195 cards is still missing?

Mr. Swiren: One of the 195 cards is still missing.

Trial Examiner Dudley: So there are 194 cards there?

Mr. Swiren: And there is one man who does not have a card in this group.

The Witness: There is one man who does not have a card in this group. He does not have a card of this type.

Q. (By Mr. Swiren.) He does not have a card of this type, you say?

A. That is right.

Mr. Swiren: That is all.

Cross-Examination.

Q. (By Mr. Walsh.) What is his card number, Mr. Brown?

A. Petz'?

A. Yes.

A. We passed through it. I do not remember what it was.

Q. Can you find that?

A. Yes.

Q. All right.

A. The number was 140.

Q. Mr. Brown, referring to Respondent's Exhibit No. 43 which contains a group of cards representing time employees who worked for the Fansteel Company for the half
2930 month ending September 15th, there are a number of those cards in that exhibit concerning which I would like to have you testify individually.

Do your records indicate what each one of those persons did?

A. Yes, sir.

Q. In any case, where the records do not indicate what they do, would you know personally?

A. I might in some cases.

Q. You would be probably as competent a person to testify concerning the duties of these various individuals as anybody else at the company?

A. No; the foremen would be.

Q. Then in these cases which might arise as we go through these cards concerning which there would be any question, if you did not know their duties, you say the foremen of the departments—

A. That is right.

Q. —would be able to testify—

A. That is right.

Q. —more accurately?

A. Yes.

Q. Is that right?

A. Yes.

Q. How long have you been with the company?

A. Over 10 years.

2931 Q. Over 10 years?

Yes.

Q. I presume there are many of these people whom you know personally, are there not?

A. Yes.

Q. Those whom you do not know personally, you are familiar with their names?

A. And with their faces.

Q. Yes. You are generally familiar with them—

A. Yes.

Q. —and what they do?

A. Yes.

Q. Is it your duty to make up the payroll?

A. I supervise the making up of the payroll.

Q. You supervise it?

A. Yes.

Q. The company pays by check, I believe, does it not?

A. That is right.

Q. You supervise the writing out of the checks?

A. That is right.

Q. You supervise the making up of the amount—

A. That is right.

Q. —that is, arriving at the amount of pay each one of these persons gets?

A. I have charge of that. I am responsible for that.

2932 Q. And you are responsible for it?

A. That is right.

Q. So if you would pay a man too much or too little, the error would have to be corrected by yourself, is that right?

A. That is right.

Q. If an error was made concerning what a man was paid, it would be your duty to straighten the thing out?

A. I would straighten it out.

Q. I will hand you this group of cards. I think there are 21 or 22 of them. I would like to have you refer to those as you testify.

A. All right.

Q. Card No. 520 represents Frederick Holm?

A. That is right.

Q. Would you tell what Holm's duties were?

A. Fred Holm is a wire drawer.

Q. Was he a permanent employee of the company on September 10th?

A. No, he was not.

Q. When did he become a permanent employee of the company?

A. I cannot say that from the records that I have with me.

Q. Would the time card indicate whether he was working for the company on September 10th?

A. Yes. It would indicate he was not.

Q. He was not working?

2933 A. Yes.

Q. Let us pass on to the next man.

A. All right.

Q. Card No. 592 represents Ed Korn, is that right?

A. Yes, Ed Korn.

Q. What were his duties?

A. His duty was that of a bricklayer.

Q. Was he a permanent employee—

A. Yes.

Q. —of the company?

A. Yes, sir.

Q. Was he employed on the 10th day of September?

A. Yes, he was.

Q. Is he still employed by the company?

A. I do not have the records beyond these dates with me.

Q. You do not have the records beyond these dates with you?

A. No.

Q. Do you have any independent recollection?

A. I do not recollect.

Q. He was called in to lay brick in what capacity? I mean—withdraw that.

He was a bricklayer; what did he work on; what part of the factory did he work on?

A. I can't say that.

Q. You cannot say?

2934 A. I do not know what he worked on.

Q. Do you permanently employ at this time bricklayers?

A. No. We have our work done by outside contractors.

Q. Outside contractors?

A. Yes.

Q. Was he properly a member of the maintenance crew?

A. Yes.

Q. Your records—the records at least that you have with you do not indicate whether he is working now?

A. No, they do not. I have only one month's records.

Q. You just have the records for the month of September—

A. That is right.

Q. —concerning which we are talking?
A. That is right.
Q. You have no independent recollection of whether he worked after September or not?
A. No. I do not handle this in detail every day.
Q. I see.
A. I have my timekeeper take care of that.
Q. I see. Let us proceed to card No. 576, the card of Frank Lodesky.
A. Our records show Frank Lodesky was employed by the company on September 10th.
Q. Did he work any time during the month of September?
A. He did not work in the month of September.
Q. I believe, as a matter of fact, Lodesky was ill?
2935 A. I believe he was.
Q. He had a long, lingering illness, and later died?
A. Yes, he did.
Q. Do you recall when he died?
A. I happen to have that information.
Q. You do not have it?
A. Yes, I have it.
Q. Oh.
A. He died October 14th.
Q. He died October 14th?
A. That is right.
Q. Nevertheless, he was carried on your rolls as an employee?
A. That is our practice. We do not discharge a man when he is ill.
Q. Now, refer to card No. 318, the card of Ernest Benson.
A. Ernest Benson is a watchman.
A. Yes.
Q. Is he paid on a monthly or hourly basis?
A. An hourly basis.
Q. Where does he perform his duties?
A. Between all the buildings.
Q. What does he do, have a detect system? Does he go around and punch clocks at various times and at various places?
A. That is right.
2936 Q. Now, refer to card No. 358, the card of Anton—you pronounce it.
A. Sustersech.
Q. How do you spell that?

A. S-u-s-t-e-r-s-e-c-h.
Q. Mr. Swiren: What is his first name?
Mr. Walsh: Anton.
Mr. Swiren: All right.
Q. (By Mr. Walsh.) What do your records indicate as to him?
A. I happen to know he has been employed by the company for a number of years. He was ill during the first half of September.
Q. He is since deceased, I believe.
A. Yes, he is.
Q. Do you recall when he died?
A. He died during February, 1937.
Q. 1937?
A. That is right.
Q. You do not recall when he died?
A. Not the exact date, no. I do not have that.
Q. Was it before or after the trouble, do you remember?
A. I do not remember. I believe it was before that.
Q. He was, of course, carried as an employe—
A. He was.
Q. — when he was not working?
2937 A. He worked the full last half of September.
Q. He worked the last half?
A. Yes.
Q. Now, refer to card No. 187, the card of Harry Brandt.
A. He anneals tantalum sheet. He worked the full period in September.
Q. He is employed in the laboratory, is he not?
A. No.
Q. Where does he work?
A. He works in the tantalum annealing department.
Q. The tantalum annealing department?
A. Yes.
Q. Was he working there in September?
A. The full month of September, yes, sir.
Q. Now, refer to card No. 97, the card I believe it is, of Eino Johnson.
A. He operated heading machines.
Q. The card you furnished us there is dated what date?
A. This date here (indicating)?
Q. Yes.
A. It is dated August 15th. I can make sure about that in just a minute, and see whether that is wrong.

It is his card for September 15th. It has been misdated in the office.

Q. The card you submitted truly reflects the period
2938 of time he worked during the first half of September, is that right?

A. Yes.

Q. But the card—

A. The card should be dated "September 15th".

Q. September 15th?

A. Yes.

Q. It is erroneously dated "August 15th"?

A. It is erroneously dated "August 15th" by the clerk.

Q. Did he work—or rather, has he been regularly employed by the Company, and was he at that time?

A. Yes.

Q. He did work during the month of September?

A. Yes.

Q. Both halves of the month?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, refer to card No. 252, the card of Jane Collier. When did Miss Collier start to work?

A. Apparently on September 15th.

Q. 1936?

A. That is right.

Q. Did Miss Collier work during the last half of September?

A. Yes.

Q. She was not employed before September 15th—
2939 A. That is right.

Q. — 1936?

A. That is right.

Q. Now, refer to card No. 155, the card of Edward Chapman.

A. He was in the annealing department.

Q. He was in the tantalum annealing department?

A. Yes, sir.

Q. He did not work in the laboratory during that period of time?

A. No, sir. He worked in the tantalum annealing department.

Q. You have him charged to that department, is that right?

A. Yes.
Q. Do you know whether Chapman was in the laboratory?
A. As far as I know he was not.
Q. He was not?
A. That is right.
Q. You have carried him for some time?
A. He has been employed many years.
Q. Many years?
A. Yes.
Q. You have always had him charged to that department as far as your records are concerned?
A. Yes.
Q. He works on an hourly basis?
A. That is right.
2940 Q. Refer to card No. 326.
A. Yes.
Q. Will you spell both names, and pronounce them for us.
A. Well, I will spell them. The first name is Sever, S-e-v-e-r; the second name is Sorzickas, S-o-r-z-i-c-k-a-s.
Q. Yes.
A. He is a watchman.
Q. He is a watchman, is he?
A. Yes.
Q. Where does he perform his duties?
A. As far as I know, all the watchmen make the same rounds.
Q. They have about the same duties, and work probably in shifts?
A. Yes.
Q. They plug in at various places?
A. They alternate. They go first one way and then the other.
Q. Is he paid on an hourly basis?
A. Yes.
Q. Now, refer to card No. 317.
A. That is the card of Louis Lindich.
Q. Yes.
A. Louis Lindich is also a watchman.
Mr. Swiren: How do you spell that?
The Witness: L-i-n-d-i-c-h.
Q. (By Mr. Walsh.) Now, refer to card No. 312.
2941 A. The same.
Q. What is his—
A. No. 312; he is also a watchman.

Q. Give the name to the reporter, please.
A. Joe Zewe.
Q. Spell the last name.
A. Z-e-w-e.
Q. Now, refer to card No. 229, the card of Joseph Herberger.
A. He is a janitor.
Q. He is a janitor?
A. Yes.
Mr. Swiren: How do you spell that?
The Witness: H-e-r-b-e-r-g-e-r.
Q. (By Mr. Walsh.) He is a janitor and also a watchman at the gate, is he not?
A. He alternates.
Q. He alternates?
A. I believe he relieves the watchman at the gate at periods.
Q. Some of his duties are those of a janitor—
A. His duties are those of a panitor. That is why he was hired.
Q. He was hired as a janitor?
A. Yes.
Q. He also relieves the watchman at the gate?
A. As far as I know, for the lunch period, or some-
2942 thing like that.
Q. I see. He is available for that purpose?
A. Yes.
Q. Now, refer to card No. 140. That is the one whose card you do not have here.
A. He is also a janitor.
Q. He is also a janitor?
A. Yes.
Mr. Swiren: How do you spell his name?
The Witness: P-e-t-z.
Q. (By Mr. Walsh.) He is employed at the office, is he not?
A. He is janitor in the office building, yes.
Q. He has no other duties in and about the factory?
A. No, sir.
Q. His time actually is kept on the general office time record, is it not?
A. His time record is kept in the factory payroll books.
Q. It is carried on the factory payroll, is that right?
A. He is a factory payroll man.

Q. He is a factory payroll man?
A. Yes.
Q. He is so charged in your accounting practice?
A. Yes.
Q. That is correct, as I understand it?
A. Yes.
2943 Q. You keep his time, however, for convenience, I suppose—I mean, he punches the office clock?
A. He punches the office clock. In fact, he does not punch the clock now, because we took the clock out.
Q. I see.
A. Right at the present time he just turns in his own cards.
Q. He just turns in his own cards?
A. They are O. K.'d by the superintendent, and he is paid.
Q. He is paid on an hourly basis?
A. On an hourly basis, yes.
Q. The next card you have there is No. 4, the card of Elsie Aigner.
A. Yes.
Q. What are Elsie Aigner's duties?
A. Setting up contacts and instructing new help.
Q. Does she have any other duties that you know of?
A. She takes care of some of the records that come to the factory office.
Q. What does she do, keep track of the production of the girls?
A. No. That is taken care of by Dean Bennett.
Q. Dean Bennett does that?
A. He signs all the cards.
Q. Dean Bennett is the person, I presume, to whom
2944 Mrs. Aigner is responsible, is that right?
A. He is her foreman.
Q. Do you know whether she is ever referred to as a forelady?
A. I have never heard her referred to as such.
Q. She testified here that she was a forelady or something like that.
A. I never heard of that
Q. You do not know whether she is considered as such by the people who work in her department, do you?
A. No. As far as I know, it is Bennett that signs the reports.
Q. So far as you know. it comes from Bennett, is that right?

A. Yes, that is right.
Q. You do not know whether she has any authority to hire, fire or supervise?
A. She has no authority to hire and fire.
Q. She does not?
A. No.
Q. Now, let us progress to Charles Cerk, card No. 51.
A. His duties are the sintering and hammering of bar.
Q. Where does he work?
A. In building 2, the sintering building.
Q. The sintering building?
A. Yes.
Q. Do you know whether he has any authority to
2945 hire or fire?
A. I know he has not.
Q. You know he has not—
A. Yes.
Q. —such authority?
A. That is right.
Q. You do not know whether he has any authority to lay out work for other men, or to see whether they are doing it properly?
A. I do not know whether he has or not.
Q. You do not know that?
A. No. The foreman turns in all the cards.
Q. So far as your records would indicate then, anything he does would be through the foreman, is that right?
A. That is right.
Q. Let us take up card No. 174, the card of Frank Mack.
A. His job is swaging rods.
Q. His duties, so far as your records indicate, consists of swaging rods?
A. Swaging rods, and he is straw boss in the department.
Q. He is straw boss, is he?
A. Yes.
Q. Do you know whether Cerk is a straw boss in the sintering department?
A. I do not think he is.
Q. You do not think he is?
2946 A. No.
Q. But Mack is a straw boss?
A. Yes.
Q. He is paid as such, I suppose?

A. No. He is paid as a swager.
Q. He gets an hourly rate?
A. He is an expert swager.
Q. I beg your pardon?
A. He is an expert swager, swaging machine operator.
Q. He is so paid, as an expert, is that right?
A. Yes.
Q. Let us take up No. 166, the card of James White.
A. James White; his job is the rolling of tantalum sheet in the tantalum department.
Q. Do you know whether James White is a straw boss?
A. He is considered as a straw boss.
Q. I see.
A. We take records from him as straw boss.
Q. Let us go to card No. 408, the card of James Hall.
A. He is a rectifier.
Q. Is he also considered a straw boss?
A. He is considered a straw boss, yes.
Q. Take card No. 376, John Zewe.
A. He is an inspector.
Q. He is also considered a straw boss, is he not?
2947 A. Yes, he is. He spends most of his time however, inspecting wire, sheet, and so forth.
Q. Take up card No. 505, the card of Laurie Makinen.
A. Laurie Makinen is a wire drawer.
Mr. Swiren: Spell his name, please.
The Witness: M-a-k-i-n-e-n.
Q. Mr. Swiren: I believe he worked nights, did he not?
The Witness: I cannot say from the records.
Q. (By Mr. Walsh.) Your records do not indicate that?
A. They indicate so many hours on a certain day. They do not show whether they are nights or days.
Q. Do you know whether he had charge of the wire department or not?
A. I do know that he did not.
Q. Is he considered a straw boss?
A. No, sir, not that I know of. His full time was spent in wire drawing production.
Q. Let us take up card No. 203, the card of Jay Bisby.
A. Jay Bisby is general grinder in the contact department.
Q. Do you know whether he is a straw boss?
A. He is not.

Q. You think he is not a straw boss?
A. I know he is not.
Q. Does he have any authority to supervise?
A. Only under the instructions of the foreman.
2948 Q. Who is the foreman?
A. Dean Bennett.
Q. Dean Bennett?
A. Yes.
Q. You do not know whether Mr. Bisby occupies the same position as Elsie Aigner or not, is that right?
A. I know he does not.
Q. You know he does not?
A. Yes.
Q. Let us progress to card No. 311, the card of Louis Karpan.
A. Louis Qarpan works in the boiler house—
Mr. Swiren: How do you spell that last name?
The Witness: K-a-r-p-a--n.
Mr. Swiren: All right.
The Witness: He works in the boiler house. He is a fireman.
Q. (By Mr. Walsh.) He works in the boiler house?
A. Yes.
Q. He is a fireman, you say?
A. Yes.
Q. He is paid on a monthly basis?
A. Yes.
Mr. Walsh: Mr. Examiner, I would like to make this statement for the record, so whoever reads it will un-
2949 derstand. The Respondent introduced in evidence its exhibit No. 45, which was a group of cards 197 in number, representing persons employed by the company for the last half of September, 1936.

All of the persons concerning whom Mr. Brown has just testified with the exception of three additional persons, occupied, I believe, the same positions during the last half of the month that they did during the first half.

Therefore it will not be necessary to examine Mr. Brown as to those again on this exhibit, inasmuch as it would be repetition.

Therefore, I will not cover that same ground, but I will ask Mr. Brown about additional persons found in the exhibit.

I made a mistake, Mr. Examiner. There are three per-

sons appearing on the list of September 15th, who do not appear on the list for September 30th, and there are three persons appearing on the list for September 30th that do not appear on the list for September 15th.

Trial Examiner Dudley: You may proceed.

Q. (By Mr. Walsh.) Mr. Brown, I hand you three time cards which represent the time of the—off the record.

(Discussion outside the record.)

Q. (By Mr. Walsh.) I hand you time cards from Respondent's Exhibit 45, numbered 245, 255 and 256.

A. You mean, 254, 255 and 256?

Q. 254, 255 and 256.

A. Yes.

Q. Refer to card No. 254.

2950 A. Yes.

Q. That is the card of Mary Worklan.

A. Yes.

Q. When did this lady start to work for you?

A. The record I have here would indicate the 28th.

Q. The 28th of September, 1936?

A. I do not have the preceding records to know whether or not she was employed, but did not work during this period.

Q. I see.

A. The same thing applies to these others.

Q. They might have worked at some other time?

A. They might have I don't know what time.

Q. Have you any independent recollection—

A. No.

Q. (Continuing)—whether she is an old employee or a new one?

A. No, I haven't.

Q. If she had formerly been employed, that would be reflected by some records you have?

A. That would be reflected by records prior to this.

Q. Refer to card No. 255, the card of Lila Morgan.

A. Yes.

I would say the same thing for that card.

2951 Q. That card indicates she started to work—

A. On the 29th.

Q. —September 29th, 1936?

A. Yes.

Q. Is that right?

A. Yes.

Q. If she were an old employee, if she had been working

for some time, the records you have before you would not reflect that?

A. The records I have with me would not reflect that, no.

Q. Have you any independent recollection?

A. I do not have any independent recollection of these girls at all.

Q. You cannot tell us whether she was one of the old employees or not?

A. No.

Q. Now, take the card of Elizabeth McCann, No. 256.

A. Yes.

Q. Her card indicates she started to work on September the 28th.

A. September the 28th.

Q. If she had been an old employee, the records you have before you would not reflect that?

A. That is right.

Q. Have you any independent recollection of her?

2952 A. I have not.

Q. Returning again to the position occupied by Elsie Aigner and Jay Bisby in the contact department—

A. Yes.

Q. (Continuing)—have you ever heard anybody say they were considered as straw bosses?

A. No. I have never heard mention of that.

Q. I presume you know both of them, do you not?

A. Yes.

Q. They are old employees of the company.

A. Yes.

Q. Were you present when Mrs. Aigner testified the other day?

A. I was for some of it; I believe I was.

Q. Do you remember her having said that she furnished a list of girls whom she wanted to return?

A. On instructions from Dean Bennett.

Q. Yes.

A. Yes.

Q. Would that indicate to you she may have had some supervisory work to do along with her own work?

A. No. That would indicate she is the set-up girl. She has had much experience in setting up contacts.

Q. Explain that a little more fully. Tell us a little bit more about how that work is done.

2953 A. Setting up contacts is the operation which they perform in that department. She has been employed, I believe 20 years, 20 some odd years I think she said on the witness stand.

Q. I do not recall—

Mr. Swiren: It has been a great many years.

The Witness: Since 1908, I think.

Mr. Walsh: You are thinking of Mary Atkinson.

Mr. Swiren: I think she said 11 years.

Mr. Walsh: I do not recall.

The Witness: She is given her duties by Dean Bennett, the foreman.

Q. (By Mr. Walsh.) Does she lay out work?

A. She helps Dean Bennett lay out work.

Q. Does Jay Bisby occupy a comparable position?

A. No, sir.

Q. In his own department?

A. No, sir.

Q. He does not?

A. No.

Q. What are his duties?

A. His duties are setting up machines for the girls, taking care of the difficult parts through production. He is more of a mechanic in the department.

Q. Does he show the girls how to operate the machines?

A. He has on occasions. That is not his general job.

2954 Q. You would not be able to tell whether Elsie Aigner occupied the same position?

Mr. Swiren: That is objected to. He has explained that three or four times. I think that is enough.

Mr. Walsh: I know Mr. Brown does not know all of these things. All I want are the facts.

The Witness: A. I know it is a fact that he does not have anything to do—he would not be considered a straw boss. He is a mechanic in the department. That sums it all up.

Mr. Walsh: I think that is all.

Mr. Swiren: Let me ask you one or two more questions.

Redirect Examination.

Q. (By Mr. Swiren.) The maintenance department does work for the entire plant, I take it?

A. Yes.

Q. Some of the carpenters come in and do work in the office building?

A. Yes.
Q. And some of the electricians?
A. Yes.
Q. You treat all of that labor as part of your facto
labor?
A. That is right.
Q. You put the janitor in the office building in the sa
classification?
A. He is under the same man as the factory's ja
tors.
2955 Q. He is in the same department?
A. Yes.
Q. He has nothing to do—strike that out.
Who directs the office?
A. E. F. Radke, is office manager.
Q. Does he have any jurisdiction over the janitor?
A. No.
Q. The janitor is in the same department as the janito
in the rest of the buildings?
A. That is right.
Q. Is there any difference between his kind of service, s
Aigner's service as a janitor?
A. The kind of service?
Q. Yes.
A. It is sweeping floors in both instances.
Q. Aigner did the sweeping in the tool room, and Petz w
in the office building?
A. It was just a different building, that is all.
Q. You mentioned Frank Mack, Jimmy White, Hall, a
Zewe; you said they were regarded as straw bosses.
A. I would consider them as straw bosses.
Q. Were there foremen over them?
A. Yes, sir.
Q. Did they have or do they now have the power to hire
fire?
2956 A. They do not.
Q. Do they work in production?
A. Yes, sir.
Q. They work right along with the men there?
A. That is right.
Q. As a matter of fact, there are just a few men in ea
instance working along with a leader?
A. That is right.
Q. They are gathered together under one foreman?

A. That is right.
Q. With respect to most of them—withdraw that. Were they all on an hourly basis?
A. On an hourly basis.
Q. They are kept in the hourly payroll, and paid on an hourly basis with all other factory help?
A. They are all together.
Q. By the way, do you keep a record of the foremen?
A. No, we do not.
Q. Another department keeps those?
A. The general accounting department.
Q. You keep the records of all of the factory help?
A. That is right.
Q. You keep regularly the records of Mack, White, Hall and Zewe?
A. Yes.
2957 Q. Are all foremen on a monthly basis?
A. Yes.
Q. They do not work in production, as I understand it.
A. No.
Q. They just supervise the work of the others?
A. That is right.
Q. These men that you have designated as straw bosses, actually go into production work themselves?
A. Yes, sir.
Q. And do it?
A. Yes.
Mr. Swiren: That is all.
Mr. Walsh: I have a question or two.
Mr. Swiren: Just a moment, Mr. Brown.
The Witness: All right.

Recross Examination.

Q. (By Mr. Walsh.) Who makes out the time cards in building 2?
A. Ed Sims.
Q. Does Charlie Cerk have anything to do with that?
A. I believe that Charlie Cerk gathers statistics and items of information.
Q. Concerning the work done?
A. That is, hours and so forth on the jobs.
Q. That is, he helps to determine the cost of each operation?

2958 A. No. He merely submits the information to the office.

Q. From which you figure the cost?

A. From which we figure the cost.

Q. Is that right?

A. Yes.

Q. For instance, if he had four men working four hours on a certain job, he would turn that time in?

A. The time ticket would come through that way, signed by the foreman.

Q. He is the one who comes around and gathers up the time, is that right?

A. He gathers it up under the jurisdiction of the foreman.

Q. That is done under the jurisdiction of the foreman, is that right?

A. Yes.

Q. When the foreman Sims is away, does he do that all himself, and send the time in himself?

A. He may possibly do it during a vacation period.

Q. Well, suppose Sims was away on a vacation.

A. I believe during vacation period all the time come through Luther Henry.

Q. It all comes through Luther Henry?

A. I believe it does.

Q. Then he would do the same for Luther Henry that he had done for Sims?

2959 A. Yes.

Q. Is that right?

A. That is right.

Q. You do not know whether Sims assigns him to other duties, do you?

A. He has many other duties. He hammers and sinters, yes.

Q. Does he assign him any other supervisory duties?

A. None that I know of.

Q. Does he do any breaking in of new help?

A. No.

Q. Or things like that?

A. I do not think so.

Mr. Walsh: That is all.

Redirect Examination.

Q. (By Mr. Swiren.) Jane Collier started on the 15th of September, and was a permanent employee, I take it. She stayed right on?

A. I believe she did.

Q. She stayed on through all of September, did she not?

A. What was her number?

A. 252.

Trial Examiner Dudley: 252.

The Witness: Yes, she was employed during the full month of September.

Q. (By Mr. Swiren.) You indicated that Frank
2960 Mack was not a permanent employee, is that right?

A. What was his number?

Mr. Keele: No. 530.

Mr. Swiren: 520.

Mr. Keele: Oh; I thought it was 530.

Mr. Swiren: No; 520.

The Witness: I indicated that Frank Mack was not employed on the 10th. That is right.

Q. (By Mr. Swiren.) He was employed subsequent to that time?

A. He was employed to the 3rd.

Q. Of what?

A. Of September.

Q. To the 3rd of September?

A. Yes.

Q. On the 1st of September, the 2nd and the 3rd, he was employed?

A. Yes, sir.

Q. All the others were permanent employees—

A. Yes.

Q. —is that right?

A. Yes.

Q. All the other people whose cards have been talked about, and whose cards were introduced in evidence were permanent employees?

A. That is right.

2961 Mr. Swiren: That is all.

Mr. Walsh: I have just one or two more questions about Bisby.

Q. By Mr. Walsh.) When Dean Bennett is away, what are Lisby's duties, if you know?

A. I believe when Dean Bennett is away that Bisby and Aigner between the two—

Q. You are referring to Elsie Aigner?

A. Yes—take the time cards.

Q. Between the two of them, they get up the time, is that right?

A. Yes. I do not believe, however, it has been that way in each instance. I believe there have been others that took care of that.

Q. Who are the others?

A. I do not recall any of them.

Q. You do not recall them?

A. No.

Q. Then Elsie Aigner and Jay Bisby, you know, do report in the time when Dean Bennett happens to be away?

A. Yes. That is pretty much of a formality, reporting in the time to the office. The employees punch their own clock cards.

Q. Were any of these departments, or have either of these departments in which Bisby and Aigner are employed been on a piece work basis prior to the reorganization?

2962 A. Aigner's, yes, and also from grinding which Bisby was doing.

Q. Would they collect statistics for Dean Bennett for the purpose of determining the pay for the various operations?

A. No, sir.

Q. They would not?

A. No.

Q. The employees would report that direct, I suppose?

A. They would report that on their cards.

Mr. Walsh: I see. That is all.

Mr. Swiren: That is all.

Trial Examiner Dudley: You may be excused.

(Witness excused.)

Mr. Block: Mr. Examiner, may I ask a question at this time?

Trial Examiner Dudley: Yes.

Mr. Block: I would like to ask whether or not the subpoenas that previously have been mentioned in the course of these hearings are available to us?

Trial Examiner Dudley: I have received no decision from Washington on that yet.

Mr. Block: We rest.

Mr. Swiren: We rest.

Trial Examiner Dudley: Do you rest your case?

Mr. Swiren: Yes.

2963 Trial Examiner Dudley: You rest, subject to the fact that if they come, you would like to use them?

Mr. Block: We rest. We cannot tell what the future may bring. Under the present conditions, there is nothing else for us to do but rest, and we rest accordingly.

Mr. Walsh: Does Respondent rest?

Mr. Block: Yes.

Mr. Walsh: I would like to put on one other witness.

Trial Examiner Dudley: Very well.

Mr. Walsh: Harold Dreyer.

HAROLD DREYER, recalled as a witness for the National Labor Relations Board, having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Walsh.) Your name is Harold Dreyer?

A. Yes.

Q. You have previously been sworn—

A. Yes.

Q. —and testified in this case, is that right?

A. Yes.

Q. I will ask you whether you know Jay Bisby.

A. Yes.

Q. How long have you known Jay Bisby?

A. Between 9 and 10 years.

Q. Does he work in the same department that you did?

2964 A. Yes.

Q. What are his duties?

A. Well, whenever we have to get parts for our machines or anything, we go to Bisby, and he makes them up, or gets them for us. If something goes wrong with the machine, we go to Bisby.

Q. Does he lay out work for production, or anything like that?

A. He has charge of us for laying out work, when we are out of a job. We go to him when Mr. Bennett is on vacation.

Q. He takes charge of the department, when Mr. Bennett is away?

A. He tells us what to do and what not to do.

Q. In the normal course of operations when you run out of work Mr. Bennett assigns you work, is that right?

A. Yes.

Mr. Swiren: Just a moment, please. I wonder if I can have the reporter read the last two or three questions and answers. I did not hear them.

Mr. Walsh: Certainly.

Mr. Swiren: Just read me the last few questions and answers please, Mr. Reporter.

(The record was read as above recorded.)

Q. (By Mr. Walsh.) At one time did you have a conversation with Mr. Bisby relative to becoming a member of lodge 66?

2965. A. Yes.

Q. What did Mr. Bisby say to you, and what did you say to him?

A. Well, I talked to Mr. Bisby about joining the union, that the fellows had a union down there. I talked to him at his home.

He says, "Harold, I am 100 per cent for you fellows and I am 100 per cent for the union," he says, "but, I can't join."

I says, "Why?" He says, "I am a straw boss," like Elsie Hart. You wouldn't have her in the union." I says, "No, the lodge hasn't considered her as eligible."

So we didn't ask him any more.

Mr. Swiren: I move to strike that answer. I do not see that it makes any difference whether some employee told him that a certain person was eligible or not eligible for membership in the union.

It is ordinary hearsay. It has no probative value. They ought to bring in the man himself to testify to his duties, and not what he may have said to this man.

Trial Examiner Dudley: Objection overruled.

Q. (By Mr. Walsh.) When you referred to "Elsie Hart", did you mean Elsie Hart Aigner?

A. Elsie Aigner.

Mr. Swiren: Objection.

The Witness: I have always called her—

Mr. Keele: Counsel is asking the witness to probe

2966 the mind of a third person.

The Witness: I have always called Elsie Aigner "Elsie Hart."

Trial Examiner Dudley: What did you say? Whose name did you mention?

The Witness: I meant Elsie Aigner, but I named it as "Elsie Hart", because that was her maiden name, and I somehow always say "Hart" for "Aigner".

Trial Examiner Dudley: You meant "Elsie Aigner"?

The Witness: I meant "Elsie Aigner."

Mr. Walsh: That is all.

Cross-Examination.

Q. (By Mr. Swiren.) How long had you known Bisby before you asked him to join your union?

A. Between 9 and 10 years.

Q. You knew all of his duties by that time pretty well, did you not?

A. Yes.

Q. You thought at that time that it was all right for him to join your union, did you not?

A. I had known—

Q. Do not tell me what you have known. The question calls for a yes or no answer. Did you, or did you not?

A. What was the question?

Mr. Swiren: Read the question.

2967 (The question was read.)

A. I didn't know for sure.

Q. (By Mr. Swiren.) You asked him to join the union, did you not?

A. I went to see him, to see if he did hold that position. He had been demoted there many times.

Q. You just asked him what his position was. You did not ask him to join the union?

A. I asked him to join the union, and then I found out he still held his position as foreman or straw boss.

Q. You did not know that?

A. I had a hazy idea, when times got slack there, that he was straw boss. He was always telling us what to do.

When they demoted him, he still told us what to do. He couldn't get it out of his system.

Q. You asked him to join the union anyhow?

A. I asked him if he would like to join.

Q. When was that?

A. Well, I couldn't say the date.

Q. Give us the year first. Let us make some progress that way.

A. (No answer.)

Q. It is difficult to remember the year, is it?

A. Well, the union started the last part of the year, and the first part of next year.

2968 Q. You do not know whether it was in 1936 or in 1937, in other words, is that right?

A. I wouldn't say it was in July, or whether it was in January. I would have to think.

Q. Well, you think, and we will wait.

Mr. Keele: Shall we have a recess?

Mr. Swiren: While the witness is thinking, maybe we had better have a recess.

Trial Examiner Dudley: What is the question?

(The question was read.)

Q. (By Mr. Swiren.) Have you had an opportunity to think now?

A. I don't know. I went so many places, and to so many peoples' houses, I can't remember. I went to a great many peoples' houses.

I went to some in September, and I was still going in January.

Q. Do you know when you went to see Jay Bisby?

A. It was during the time we had the union down there.

Q. That is the best answer you can give me? You cannot tell me the approximate month?

A. No.

Q. You do not know whether it was in January, September, or July?

A. I might find out later on.

Q. Give us your best recollection.

2969 A. I would have to see the fellow that went with me. I can't remember.

Q. If we want him, we will call him. Let us have your recollection.

A. I don't remember.

Q. But you remember the conversation very well?

A. I remember the conversation very well.

Q. Do you remember John Kondrath talking to him about joining the union, too?

You know that, do you not?

A. I didn't ask him—

Q. No, no. Let us get a direct answer.

A. I don't remember whether I heard John say anything about it.

Q. You will not swear you did not know John Kondrath asked Bisby to join the union?

A. I will swear I don't remember.

Q. That is the best answer you can give to that question?

A. That is the best I can do.

Q. From the duties Bisby kept doing there, you did not know from time to time whether he was a straw boss or not, so you had to go and find out by asking him, is that right?

A. I went there and asked him to join the union, and found out from what he told me that he was still a straw boss.

Q. You do not know whether that was a good excuse
2970 to get away from joining your union, do you?

A. I wouldn't say so.

Mr. Swiren: That is all.

Mr. Walsh: That is all.

(Witness excused.)

Mr. Walsh: That is all I have. I have nothing further.

Mr. Block: Everybody is all through. Everybody rests, I take it.

Trial Examiner Dudley: Yes.

Mr. Walsh: I am through.

Mr. Block: We are all through.

Trial Examiner Dudley: I will ask for the purpose of the record whether or not Respondent does wish to put in any evidence concerning the existence or non-existence of negotiations between the union and the company immediately after the commence of the sitdown on February 17th, 1937.

Mr. Block: Our answer is that all of the evidence there is has already been introduced on that subject by the Board.

Mr. Swiren: That is all that there is.

Mr. Block: That is all the evidence that there is.

Trial Examiner Dudley: All right.

Mr. Block: I should say, it was introduced by the Board as covered by the record, in that case.

There is nothing further.

Trial Examiner Dudley: At the close of the hearing,
2971 I think the Board had better go over the Board's Exhibits. We have checked the Respondent's Exhibits, and they are all there.

There is one item there—

Mr. Swiren: If the Examiner please, before you adjourn the hearing, we desire to renew our motion to dismiss the complaint. This is a renewal of the same motion that was made to the Examiner at the conclusion of the Board's case, part of which was denied, and part of which was reserved for determination at this time.

Trial Examiner Dudley: At the close of the government's case, you made a motion to dismiss in whole, and also in a

number of parts. As to the number of parts, I reserved decision until the close of both cases.

As I have gone over the evidence, and given some thought to the drafting of my own report, it seems to me more logical, and it would be easier to handle those things in that report.

In that way I can have my report cover the entire case, and make such dismissals as should be made in that report rather than do it piecemeal, by having some orders made here, and some there.

Do you not agree with me on that?

Mr. Swiren: I think that is something the Examiner should decide for himself.

Trial Examiner Dudley: There is no particular point in making them now, is there?

2972 Mr. Swiren: I do not thing it makes any difference.

Trial Examiner Dudley: I do not think so.

Mr. Block: Just so it is not a waiver of anything; I assume that our motion has been made and taken under advisement, is that correct?

Trial Examiner Dudley: Yes.

Mr. Block: All right.

Trial Examiner Dudley: Is there anything else we should take up?

Mr. Block: I merely want to make it clear that this is the same motion with respect to the complaint in its entirety and the individual parts referred to in the motion.

Trial Examiner Dudley: Very well. Are there any other matters on which you want rulings?

Mr. Block: There is nothing else.

Trial Examiner Dudley: Off the record.

(Discussion outside the record.)

Trial Examiner Dudley: Let the record show that the respondent's renewal of its application for subpoenaes was air-mailed to the National Labor Relations Board at Washington on the evening of June 23rd; that a telegram received this morning indicates they have not as yet received that application, nor had they apparently received the telegrams.

I likewise notified them the application was en route. Let the record further show that I telegraphed the Board in

2973 Washington again at noon today informing them that the application had been air-mailed on the 23rd, and we are still waiting for their reply.

No reply has been received to date.

Mr. Block: Now, is it clearly understood that the appli-

cation you refer to in your statement is a subsequent application; that there were prior applications?

I just want the record to be clear.

Trial Examiner Dudley: It is a new application entirely, as to one part.

Mr. Block: It does not make any difference, what name you call it by. There were previous applications made, which I think the Examiner said previously in the record were submitted and were denied.

Trial Examiner Dudley: Yes. The history of that is that your original application for most of the subpoenaes contained in the new application was made before the hearing started, and was denied by the Board from Washington.

Mr. Block: That is all we want. We want to have that in the record.

Trial Examiner Dudley: Your application as renewed did contain one additional paragraph which had never been made before.

Mr. Block: It also contained some old paragraphs.

Trial Examiner Dudley: That is correct.

2974 Mr. Block: That is correct. I think we understand each other. I would like to merely ask this, as a matter of information: you said something about having communicated with—I do not know who they go to, or where they go. Where do your requests go?

Trial Examiner Dudley: They go to the Board in Washington.

Mr. Block: So there will be no misunderstanding, would it not be well to have those requests here, so as to complete the record up to date?

I do not care so much about the—

Trial Examiner Dudley: I can put that in.

Mr. Block: If you have not any objection, I think it would be well. If you have any objection, do not do it.

However, so the record will show what took place, I think their answer would be pertinent.

Trial Examiner Dudley: Let us do that right now.

Mr. Walsh: I think the original denial is in.

Mr. Keele: That is right.

Mr. Block: That is right.

Trial Examiner Dudley: Here is the telegram we got this morning.

Mr. Block: This telegram we will call—

Mr. Walsh: Let us mark it Board's Exhibit No. 1-R.

Trial Examiner Dudley: It may be received.

(The document referred to was thereupon received
2975 in evidence and marked BOARD'S EXHIBIT NO. 1-R.)

Mr. Block: I hate to bother you again, but it has been suggested that it is probably in order that the Examiner state for the purpose of the record when the last letter concerning the subpoenaes was sent, how it was sent, whether or not telegraphic messages were sent on the same day to the Board at Washington, and the substance of those messages.

Trial Examiner Dudley: Do you want to put this in? Maybe this will help you.

Mr. Walsh: Mark this one Board's Exhibit 1-S.

(The document referred to was thereupon received in evidence and marked BOARD'S EXHIBIT NO. 1-S.)

Mr. Block: In addition to Board Exhibit 1-S, there is a letter sent, I understand it, on the same day by air mail, directed to the Board.

Trial Examiner Dudley: Yes.

Mr. Block: That would be dated June 23rd, is that right?

Trial Examiner Dudley: Yes. Now, maybe you would like to have a copy of the telegram which I sent in answer to this one. I do not have a copy of it, but you can get a copy from the telegraph office.

It informed them that you had made this renewal, and we were still waiting for their reply. Is there any objection?

Mr. Block: No objection.

2976 Trial Examiner Dudley: Off the record.

(Discussion outside the record.)

Trial Examiner Dudley: Mr. Reporter, this will be Board's Exhibit 1-T.

(The document referred to was thereupon received in evidence, and marked BOARD'S EXHIBIT NO. 1-T.)

Trial Examiner Dudley: Immediately after the hearing on the afternoon of June 23rd, at which time Mr. Swiren stated he would prepare a renewal of his application for subpoenaes in writing, I sent to the National Labor Relations Board in Washington a telegram of which Board's Exhibit No. 1-R is a carbon copy. At approximately 6:30 P. M. I mailed to the Board at Washington a letter transmitting to the Board the original written renewal of the respondent's application for subpoenas of which Board's Exhibit 1-S is a carbon copy.

That was mailed in the Waukegan Hotel. I saw the postman empty the box at about 8:15. It was sent air mail, prepaid, and properly addressed.

Mr. Swiren: Do you want to add that the letter accompanied it?

Trial Examiner Dudley: It says, "Enclosed you will find", and so forth.

Mr. Block: He has already stated that.

Trial Examiner Dudley: At about 10:30 on the morning of June 25th, I received at the post office a telegram from
2977 the National Labor Relations Board of which Board's Exhibit 1-T is the original.

At noon on June 25th, I sent to the Board a telegram replying to theirs which is Board's Exhibit 1-T, of which Board's Exhibit 1-U is an exact copy, which I do not now have but will procure from the telegraph company and attach to the record.

Mr. Block: At 3:15 on June 25th, there is still no reply

Trial Examiner Dudley: At 3:15 P. M. on June 25th, no reply has been received from the Board at Washington. Under these circumstances, Respondent rests its case without desiring to wait longer for a reply.

Mr. Swiren: No, I do not think that is right. We are not taking any position on that.

Trial Examiner Dudley: Do you wish to rest?

Mr. Block: The record shows we already rested; so has the government.

Mr. Walsh: They rest without waiving any rights to produce additional testimony before the Board at some other time, if the Board grants the request for subpoenaes.

Mr. Block: We rest without waiving any rights on that question or any other question.

Trial Examiner Dudley: At 3:15 P. M. Respondent rests its case without waving any of its rights.

Do you or do you not wish to be notified if we get a
2978 ruling on the subpoenaes?

Mr. Swiren: We wish to be notified of any rulings by the Board.

Trial Examiner Dudley: Respondent asks to be notified when—

Mr. Swiren: No, we do not ask for anything.

Trial Examiner Dudley: Do you or do you not?

Mr. Swiren: We do not ask for anything.

Trial Examiner Dudley: Respondent makes no request for information concerning the ruling of the Board on the renewal of its application for subpoenaes.

Mr. Block: I do not think you should ask us to agree to that. Why not let the situation speak for itself.

Trial Examiner Dudley: I want to know whether you want to be told or not. You must take either one position, or the other position here.

Mr. Block: Let us cross that bridge when we get to it. It is agreed at the present time that neither side has any evidence to introduce.

Trial Examiner Dudley: That is right.

Mr. Block: The case is closed. Both sides have rested. There is nothing further to do.

Trial Examiner Dudley: Yes.

Mr. Block: There has been no answer. As to what will happen, why speculate on that?

2979 Let us cross that bridge when we come to it. The case is closed.

Mr. Keele: The proofs are closed.

Mr. Block: Yes. That is what I mean.

Trial Examiner Dudley: For the record: when I get a reply from the Board, I will notify you by telegraph at your Chicago office.

Mr. Block: You will notify me?

Trial Examiner Dudley: I will notify Mr. Swiren.

Mr. Keele: Certainly.

Mr. Block: We have no objection to that.

Trial Examiner Dudley: Very well. There is one other thing to straighten out before the hearing closes. Let the record show that in the numbering of the Board's Exhibits, the No. 37 was skipped. There is no Board's Exhibit No. 37.

(The documents referred to were thereupon received in evidence, and marked RESPONDENTS' EXHIBITS NOS. 43, 44, 45, and 46.)

The hearing is closed.

(Whereupon at 3:30 O'Clock, P. M., June 25th, 1937, hearing closed.)

2980 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XIII-C-80) • •

Room 4, United States Post Office,
Waukegan, Illinois,
Friday, June 25, 1937.

The above-entitled matter reconvened for further hearing at 5 o'clock, P. M.

Before:

Tilford E. Dudley, Trial Examiner.

Appearances:

William R. Walsh, Regional Attorney, on behalf of the National Labor Relations Board.

Levinson, Becker, Peebles & Swiren, Suite 2525, One North La Salle Street, Chicago, Illinois, by

Max Swiren, Harold M. Keele, and Sidney M. Block, Waukegan, Illinois, on behalf of Fansteel Metallurgical Corporation.

Lester Collins, Waukegan, Illinois, on behalf of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

2981 Trial Examiner Dudley: Let the record show that we have reconvened at 5 P. M.—

Mr. Swiren: On motion of the Examiner.

Trial Examiner Dudley: On motion of the Examiner.

Mr. Swiren: Yes.

Trial Examiner Dudley: (Continuing) —with all attorneys present. The Examiner will call upon Mr. Walsh to announce the ruling of the Board on the Respondent's renewal of its application for subpoenaes.

Mr. Walsh: At 3:35 P. M., I received a message to call operator 28 in Chicago. I called operator 28 in Chicago and was connected with the Regional office of the National Labor Relations Board for the 13th region.

I talked with Mr. L. J. Bajork, who advised me that he had just received a telephone call from Benedict Wolf, Secretary of the National Labor Relations Board, in which Mr. Wolf announced that the Board had at that time acted upon the

renewal of the respondent's application for subpoenaes and subpoenaes duces tecum; that the application was granted in part and denied in part.

I was informed that the Board had granted the application for a subpoena for Robert Pilkington, and had granted the application for a subpoena duces tecum directing Carl Swanson to produce before the Examiner the membership lists and membership cards and membership books of lodge 66 of
2982 the Amalgamated Association of Iron, Steel & Tin Workers.

I was directed to furnish to counsel for the Respondent subpoenaes as I have enumerated above. Upon the reconvening of the hearing at 5 o'clock I handed to counsel for the respondent a subpoena duces tecum calling upon Carl Swanson, financial secretary of lodge 66 of the Amalgamated Association of Iron, Steel & Tin Workers, to appear before the Trial Examiner with membership lists, membership cards, and membership books.

I also handed to counsel for the Respondent a subpoena for Robert Pilkington of the United States Department of Labor, Chicago, Illinois, to appear before the Trial Examiner. The above subpoenaes were dated June 25th, 1937, and called upon them to appear at 4 P. M. this afternoon.

Further, we wish to announce that the records called for by the subpoenaes are now in court and are available for the examination of counsel.

Mr. Block: Which records are available?

Mr. Walsh: The membership cards, the membership lists, and such records as the union has relating to the membership of the lodge are present in court for the examination of counsel.

Mr. Block: Pardon me. May I ask a few questions of counsel, in view of counsel's statement, to clear up the record?

Mr. Walsh: Yes.

2982½ Mr. Block: First, I would like to ask whether these subpoenaes that you have just handed us were filled out by yourself since we adjourned the hearing this afternoon?

Mr. Walsh: That is correct.

Mr. Block: They were subpoenaes signed in blank which were in your possession, including other subpoenaes that were signed in blank, that you had for use in connection with the introduction of your evidence?

Mr. Walsh: That is correct.

Mr. Block: Since the beginning of this hearing on June 3rd?

Mr. Walsh: I do not recall when those subpoenaes came into my possession.

Mr. Block: They have been—

Mr. Walsh: During the course of the hearing I have had certain subpoenaes in my possession.

Mr. Block: This subpoena does not cover, you do not have here, and have not produced the minute records, books of account, checkbooks, and the correspondence relating to the solicitation of members among the employees of respondent, and relating to the participation of lodge 66, and any of its officers, members or agents in connection with the seizure of the Fansteel buildings on February 17th, is that correct.

Mr. Walsh: Read that question, please.

(The question was read as above recorded.)

2983 Mr. Walsh: That is correct.

Mr. Block: Mr. Pilkington is not present?

Mr. Walsh: Mr. Pilkington is not present.

Mr. Block: He is not present. The subpoena calls for his presence here at 4 o'clock.

Mr. Walsh: That is right.

Mr. Block: On the 25th of June; that is today.

Mr. Walsh: Today.

Mr. Block: He has not been here?

Mr. Walsh: He has not been here.

Mr. Block: He is not within the confines of Lake County?

Mr. Walsh: To my knowledge he is not.

Mr. Block: To your knowledge, of course.

Mr. Walsh: That is correct.

Mr. Block: Now, if the Examiner please, I think we ought to make a few observations if any reply is necessary to the situation that now presents itself.

With your permission, I would like to just make a statement of the Respondent's present attitude on this latest development.

Trial Examiner Dudley: Go ahead, Mr. Block.

Mr. Block: I want to first say, if the Examiner please, that the record discloses that on June 3rd of this month an original application for certain subpoenaes was made and presented to the Board through the Examiner. It was
2984 made in writing. It was specific. It set forth exactly what was wanted, and was presented to the Regional Director of the National Labor Relations Board first, and then to the Trial Examiner.

That was all done before the commencement of the hearings in this case.

Trial Examiner Dudley: Just a moment right there.

Mr. Block: If I make some misstatement, you may correct me.

Trial Examiner Dudley: Go ahead.

Mr. Block: Those subpoenaes called for matters which the Respondent deemed material to the issues which might arise in these hearings.

The matter involved and issues involved are of greatest importance. It is not a question of who is right, or who is wrong. It is a question of trying the case fairly, impartially, and giving both sides a fair and impartial hearing.

The application that was made was prompted by certain beliefs of counsel for the Respondent that that proof was essential in order to properly present all of the facts, and to properly defend the subject matter that is listed in the complaint.

The date upon which the hearing began was June 7th, four days later. Up to that time the subpoenaes had not been furnished, supplied, or given to the Respondent or its coun-
2985 sel. Since June 7th there have been at least 142 wit-
nesses called before this Board and examined at great length by both sides.

The record consumed for the Board's case, before the Respondent introduced any testimony, amounted to at least 1,678 pages. The Board closed its case, as I recall it, last Friday, June 18th. At that time, on June 18th, the application for certain subpoenaes and certain records was again renewed. The application was renewed on that date, June 18th.

The Respondent did not open its case, and did not begin to introduce its testimony until Monday, June 21st. Twenty-three witnesses have been examined for the Respondent from day to day, and the record has now grown to at least 2,500 pages.

Today all of the proofs were declared closed. We again brought up the question of the subpoenaes and asked whether or not these records and the witness in question were available. The reply was, I think, that certain telegrams had been forwarded, and certain telegrams had been received in return, and certain letters had been forwarded.

That was, I think, at 3:15, when the case adjourned. At 3:53 P. M.—that is, 53 minutes after three—after everybody had left the court room, as far as the Respondent is concerned, and the people had dispersed, as far as the Respond-

ent is concerned, we received a notice by telephone that you were going to reopen the hearing at 5 o'clock; that some
2986 order had been entered apparently by the Board with respect to these subpoenaes.

Now, it further appears that the subpoenaes which have been executed and delivered were made out by Mr. Walsh, who has been here daily. I am not criticizing Mr. Walsh. Do not misunderstand me. However, that is the fact.

He had them, in other words, in his pocket, or in his file throughout this hearing. It was only after the hearing was closed, or proofs declared closed, after the Respondent's counsel had left the court room that it was decided upon in some way or in some manner that it would be perhaps better to furnish counsel for the Respondent with subpoenaes.

I want to make one additional observation in that regard. It seems very peculiar to me that throughout this hearing Mr. Walsh had subpoenaed, from his own pocket, so to speak,—that is, by taking subpoenaes out of his pocket and inserting the names—witnesses as well as documents, without the slightest restriction, and without being required to ask anybody about it.

During the hearing the Examiner and Mr. Walsh have called upon Mr. Swiren and other counsel and the members of the company for various documents, and have asked them to actually go to work down there and break down certain things that they wanted to be supplied in writing.

There were other requests made, all of which were complied with, the record will show, willingly, and without sub-
2987 poena. Every bit of information available, that was requested, considering the time we had to comply with the requests, was furnished. We furnished every conceivable record. I do not remember of anything that was denied to the Board and the Examiner.

Now, that, briefly, as we see it, is the situation here. I want to say further, that there is not a court in the land, there is not a J. P. court in the United States that will deny a litigant the right to a subpoena. Now, if you are going to grant a subpoena, it is well to grant it whole-heartedly.

If you are going to grant somebody something, if you are going to attempt to cure somebody's illness, it ought to be done before malignancy develops, and not when they are on their death bed.

This situation is not comparable to anything I think that has happened in any court. I do not know anything about

the reasons. I am making no charges. I am merely stating the facts. The subpoenaes were not supplied.

Now, the subpoenaes are supplied at this late hour, and if it has become important in somebody's eyes that those subpoenaes should have been granted, they should have been granted when they were requested, and when they might have been used, and when they were needed by the Respondents, and not after the case had closed.

If it were error to deny the issuance of the subpoenaes today, it would have been far greater error to deny the
2988 issuance of the subpoenas on June 3rd and thereafter. Why?

In the examination of 142 witnesses those particular matters called for might—we believe they would—but we will say they might have been of some assistance to the respondent.

We are deprived of that advantage for no conceivable reason at all. The record is absolutely silent on that. As late as this morning after the Examiner made it clear—I am not charging the Examiner with any bad faith about it; these remarks are purely impersonal—as late as this morning the Examiner received a telegram from which it appears that the Board apparently had not received the information that any application had ever been made for subpoenaes.

At the same time the Examiner introduced a letter that he had mailed himself, explaining the subject matter, including the renewed application, and referring to the old application, and again today wired, and still no subpoenaes appeared. That is the situation here.

In view of that fact, and in view of the final act of generosity here, of issuing subpoenaes to a litigant who needed them to defend a lawsuit, and then only granting them in part, on certain conditions, it is our position that the ill you are attempting to cure is being cured too late, and that it cannot remedy the situation.

You have only granted it in part, as it is. In other
2989 words, we are not allowed to decide for ourselves what evidence we will offer. You have made available to us certain records, documents and correspondence which we should have had the benefit of at least examining, and deciding for ourselves whether we wanted to offer them in evidence, or whether we did not.

There has been some discussion in some of the letters here as to the relevancy and materiality of some of these papers and documents. That would have been a proper matter for

the Examiner and the Board later, perhaps, to have considered.

When these documents were offered, there would have been nothing in the procedure that would have deprived you of the right to deny their admission.

However, to deny the Respondent the right to prepare its defense on any subject, on any one point we think is a gross injustice, and at this hour the granting of this can be of no benefit to us whatever for the reason we have mentioned.

We stand, therefore, on the record.

Trial Examiner Dudley: As far as I know, you now have in your possession, or at least counsel fo Respondent have in their possession all of the subpoenaes which have been authorized by the Board. Those subpoenaes called for certain documents and records of the union known as lodge 66.

I understand that all of the records so called for are now here in court and ready for your examination, which you can make either this afternoon or at your earliest convenience.

2990 One of the subpoenaes is directed to Mr. Pilkington, whom I do not know. However, the Examiner stands ready to give ample opportunity for the procurement of Mr. Pilkington at a meeting which we could have here tomorrow, or at Chicago, or at any other place that is convenient to the parties.

So, as far as the Examiner is concerned, all of the material called for by the subpoenaes is here available to you at your own convenience, and Mr. Pilkington will be made available if he can be found and procured. I do not know if we can find that out by telephone or telegraph.

Do I understand that counsel for the Respondent do not wish to avail themselves of any of these subpoenaes or any of the material that has been procured for them pursuant to those subpoenaes?

Mr. Block: We will not enter into any such understanding. Our position is fully explained by the statement I have made. The matters which are being tendered to us at this late date and hour are only part of the matters which we requested.

The witnesses whom we probably would have examined, had we had possession of these records, have already testified. There have been at least 142. The matter is of no benefit at this time at all, no conceivable benefit at this time, as we understand and see the case.

It is of no benefit whatsoever.

Trial Examiner Dudley: Do you wish to examine the
2991 records of the union that have been brought in pursuant to these subpoenaes?

Mr. Block: We do not want to add anything further to our statement, except what we have said. I do not think that you ought to question us any further about the matter. We have made our position definite and clear on all points. We have to stand or fall on what our position is. If we are wrong in taking the position that we have, that we ought to have all of the information rather than part of it, if we are wrong that we should have had this information when we needed it, of course we cannot prevail in our point of view.

Trial Examiner Dudley: Then you do not have any additional testimony, documentary or otherwise to offer. You do not wish to make use of the subpoenaes; as far as you are concerned, the evidence is in, and we may now close the hearing finally, is that correct?

Mr. Block: Again I will say that our answer is that the case closed at 3:15 P. M. this afternoon, and the subsequent events have been answered by our statement.

Mr. Walsh: At this time I will offer in evidence the subpoenaes, if they are not desired. As I understand Mr. Block's position, he must stand or fall upon his statement. Therefore, I will offer for the record these subpoenaes.

Mr. Block: If I said that we will stand or fall on my statement, I meant, of course—

2992 Mr. Walsh: I understand.

Mr. Block: (Continuing.) —my statement, and the record in this case.

Mr. Walsh: Certainly. I did not want to restrict you.

Mr. Block: Very well.

Mr. Walsh: Mr. Reporter, will you mark these as exhibits.

Trial Examiner Dudley: Yes, let them be marked.

Mr. Block: Before you do that, let the record show that these subpoenaes were handed here in the courtroom to counsel when counsel entered, which was about 5 o'clock, or shortly before, or after.

Mr. Walsh: As a matter of fact, it was about five minutes to five.

Trial Examiner Dudley: Do you wish to object to the introduction of the subpoenaes as exhibits?

Mr. Block: As I understand it, you want to use them for the purpose of the record.

Mr. Walsh: Just to make them formally part of the record, yes.

Mr. Block: For that purpose we see no reason for objecting.

Mr. Walsh: That is the only reason for doing it.

Trial Examiner Dudley: Exhibit No. 1-U is to be supplied. These will be marked 1-V and 1-W.

(Whereupon, the documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 1-V and 1-W.) 2993

Trial Examiner Dudley: Are there any other witnesses, documents, arguments, remarks, observations or anything else anybody wants to put in this record.

Mr. Block: To whom is that remark addressed?

Trial Examiner Dudley: That is addressed to all attorneys.

Mr. Block: As I understood it, the case closed at 3:15 P. M.

Mr. Walsh: I have nothing further.

Mr. Block: I have nothing further.

Trial Examiner Dudley: I will announce the hearing officially and finally closed.

(Whereupon, at 5:30 o'clock P. M., June 25, 1937, hearing closed.)

124 BOARD EXHIBIT NO. 1-J.

6-14-37.

Division of Economic Research

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.
June 4, 1937

Table 1.—Rank of Chemicals Industry in the United States.

	Number of Wage Earners	Value of Products
Rank of "Chemicals not Elsewhere Classified" Industry..	27	18
for Chemicals Industry...	53,190	$ 476,503,000
for All Industries.....	6,055,736	$31,358,840,000

Source: U. S. Department of Commerce, Bureau of the Census, Biennial Census of Manufactures: 1933, United States Government Printing Office, Washington, D. C., pp. 33-36.

125 BOARD EXHIBIT NO. 1-K.

6-14-37.

Division of Economic Research

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.
June 4, 1937

Table 2.—Rank of Chemicals Industry in Illinois.

	Number of Wage Earners	Value of Products
Rank of "Chemicals not Elsewhere Classified" Industry..	27	18
for Chemicals Industry...	3,448	$ 30,285,286
for All Industries.....	420,334	$ 2,502,175,233

Source: U. S. Department of Commerce, Bureau of the Census, Census of Manufactures: 1933—Illinois, Summary by Industries, Washington, D. C., March 5, 1935.

126 BOARD EXHIBIT NO. 1-L.

6-14-37.

Division of Economic Research

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.
June 4, 1937

Table 3.—The Chemicals Industry: Rank of Illinois.

	Number of Wage Earners	Value of Products
Rank of Illinois among states manufacturing chemical	5	5
for Illinois	3,448	$ 30,285,000
for the United States.....	53,190	$ 476,503,000

Source: U. S. Dept. of Commerce, Bureau of the Census, Biennial Census of Manufactures: 1933, Government Printing office, Washington, D. C., 1936, pp. 316-7.

127 BOARD EXHIBIT NO. 1-M.

6-14-37.

Division of Economic Research

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.
June 4, 1937

Table 4.—Sources of the Ores of Rare Metals.

Metal	Sources of Ore (1935)
Tungsten	Arizona, California, Colorado, Idaho, Montana, Nevada, Washington
Tantalum and Columbium..	South Dakota (7,681 lbs.); Nigeria (1,184,315 lbs.), Australia (6083 lbs.)
Molybdenum	Arizona, Colorado, Nevada, New Mexico

Source: United States Department of Interior, Bureau of Mines, Minerals Yearbook, 1936, Government Printing Office, Washington, D. C., 1936, pp. 443-455, 535-537.

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BOARD EXHIBIT NO. 1-N.

6-14-37.

Division of Economic Research

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.
June 4, 1937

Table 5.—The Flow of the Products of the Chemical Industry.

State	Chemicals		Motor Vehicles Bodies and Parts	
	Value of Products	% of U. S. Total	Value of Products	% of U.S. Total
Illinois	$ 36,394,430	5.4	$ 25,064,697	1.6
New Jersey	138,128,726	20.6	6,113,556	.4
New York	123,496,822	18.5	74,073,417	4.8
Pennsylvania	54,611,444	8.2	29,311,147	1.9
Total, 4 states	$352,631,422	52.7	$ 134,562,817	8.7
Total, United States	$668,697,448	100.0	$1,550,924,169	100.0
Michigan	$ 45,817,084	6.9	$1,018,596,515	65.7

State	Chemicals		Radio Apparatus	
	Value of Products	% of U. S. Total	Value of Products	% of U.S. Total
Illinois	$ 36,394,430	5.4	$ 22,818,000	18.7
Pennsylvania	54,611,444	8.2	28,461,000	23.4
Total, 2 states	$ 91,005,874	13.6	$ 51,279,000	42.1
Total, United States	$668,697,448	100.0	$ 121,802,000	100.0

Sources: United States Department of Commerce, Bureau of the Census, Census of Manufactures, 1935: Motor Vehicle Bodies and Parts—Summary by States, May 5, 1937; Chemicals Not Elsewhere Classified—Summary by States, May 6, 1937. Census of Manufactures, 1933, Government Printing Office, Washington, D. C., 1936, pp. 577-578.

142 BOARD EXHIBIT 1-R.

(Form of Postal Telegraph)

Send the following message, subject to the term on back hereof, which are hereby agreed to

Waukegan 6/23/1937

To Benedict Wolf, Secretary
Nat'l Labor Relations Board, Washington, D. C.

Regarding Fansteel case respondent rested today but reversed motion for subpoenas paragraph three four original motion Written motion in airmail.

Tilford E. Dudley

143 BOARD EXHIBIT 1-S.

Waukegan, Illinois, June 23, 1937.

Mr. Benedict Wolf, Secretary
National Labor Relations Board
Washington, D. C.

In re Fansteel Metallurgical Corporation
Case XIII-C-80

Dear Mr. Wolf:

Enclosed you will find a carbon copy of the respondent's renewal of application for subpoenas which was delivered to me at 5:30 P. M. to-day, June 23, 1937.

Paragraph 1 referring to Pilkington is self-explanatory except that Mr. Swiren informed me that Pilkington's whereabouts may be unknown at this time but that he had been in Chicago a few days ago. I see no harm in issuing this subpoena but the purpose of the proof has not been included in any of the pleadings submitted to date and its relevancy is questionable.

Paragraph 2 is a renewal of a previous application. By this information respondent hopes to prove that the applications for membership (which have been produced in court) expired, or for some other reason were not sufficient to render union membership valid at the particular dates in controversy. I can see no harm to either party in issuing this subpoena but believe that probably all of the relevant material has already been produced in court.

Paragraph 3 is not a renewal of the original application but is a new application being made at this time for records of Swanson. This is for practically the same material required in paragraph 2 except for the charter and by-laws of the union. Again this would seem to involve no harm to either party but is of questionable relevancy.

The second purpose of seeking evidence as indicated on the application is an attempt to prove that the union was a party to a conspiracy to the seizure of the respondent's plant and that, therefore, every membr of the union is responsible for this seizure regardless of whether or not they participated in the strike itself. This sounds much like a "fishing expedition" inasmuch as evidence has already been introduced showing the connection of every person mentioned in the complaint with the strike in some manner or the other.

144 The third reason given concerns eligibility and likewise seems immaterial inasmuch as the evidence submitted to-day shows that the appropriate unit and the eligibility limits of the union include all productive workers at the plant, excluding administrative, clerical and supervisory employees. The respondent does not claim that this should be made larger, and, therefore, has nothing more to prove.

Generally speaking, the issuance of these subpoenas would certainly do not harm to any party concerned and would simply involve the taking of some additional testimony. I suspect that if the subpoenas are not granted, the respondent will continually raise a great deal of fuss about them as they have already done throughout this hearing. For this reason it might be expedient to issue the subpoenas. I can not say that the matter is otherwise of any importance one way or the other. We hope to hear from you by noon on June 24 inasmuch as the respondent has now rested, except for this material, and the regional attorney will probably complete his case by noon and we will then be ready to adjourn as soon as we know your decision on these points.

Sincerely yours,

Tilford E. Dudley,
Trial Examiner.

TED:NL
Enc.

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BOARD EXHIBIT 1-T.

(Form of Western Union Telegram)

Received at 129 Water St., Waukegan, Ill. Telephone Majestic 4321.

1937 Jun 24 P M 3 29

C196 27 Govt—Washington DC 24 405P

Tilford E Dudley, Trial Examiner
Fansteel Metallurgical Hearing Room Four New U. S. Post Office Bldg.

Re Fansteel Company Received Permission to Renew Its Request for Subpoena But Has Not Done So to Date If Company Still Desires Subpoenas It Should Renew Application.
National Labor Relations Board Benedict Wolf.

146

BOARD EXHIBIT 1-U.

(Form of Western Union Telegram)

1937 Jun 25 PM 12 37

To Benedict Wolf, Secretary
Street and No. National Labor Relations Board
Place Washington, D. C.

Rated Fansteel Company reversed application for subpoenas Written application airmailed you June twenty third Am awaiting your reply.

Tilford E. Dudley
Trial Examiner.

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BOARD EXHIBIT NO. 2.

6/9/37

UNITED STATES OF AMERICA

Securities and Exchange Commission

I, Francis P. Brassor, Secretaary of the Securities and Exchange Commission, Washington, D. C., which Commission was created by the Securities Exchange Act of 1934 (15 U. S. C. A., Sec. 78a et seq), and official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, do hereby certify that attached is a full, true and complete copy of:

Facing sheet, and pages 1, 6 and 40 of annual report on Form 10-K for fiscal year ended December 31, 1935 filed April 27, 1936; and facing sheet, and pages 1, 7 and 41 of annual report on Form 10-K for fiscal year ended December 31, 1936 filed April 26, 1937 with this Commission by Fansteel Metallurgical Corporation, pursuant to the provisions of the Securities Exchange Act of 1934 as amended, under File No. 1-2331.

In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 13th day of May, A. D. 1937, at Washington, D. C.

(Seal)

Francis P. Brassor,
Secretary.

152 SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 10-K

For Corporations

Annual Report
For Fiscal Year Ended December 31, 1935
Fansteel Metallurgical Corporation
(Name of Registrant)

North Chicago, Illinois
(Address of Principal Executive Offices)

New York, March 13, 1917
(The State or Other Sovereign Power under which Incorporated and Date of Incorporation)

Perpetual
(Date of Termination of Charter)

First Tuesday in April of Each Year in New York City
(Date and Place of Annual Meetings)

(Stamp) Sec & Exchan Comm Recd 1st Mail Apr 27 1936 Docket Mail & Files.

Table of Securities Registered

Securities Registered

Title of Issue	Amount as of close of Fiscal Year: Amount as to which registration is effective	Amount as of close of Fiscal Year: Amount to be registered upon notice of issuance	Names of Exchanges on which Registered
Common Stock	175,921 shares	58,677 shares	New York Curb Exchange

Name and address of person authorized to receive notices and communications from the Securities and Exchange Commission:

E. F. Radke, Secretary
North Chicago, Illinois.

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—1—

The information required to be given under the items herein set forth is more specifically defined in the "Instruction Book for Form 10-K for Corporations".

The Instruction Book also sets forth requirements as to exhibits which are to accompany the annual report.

Affiliations

1. List the following and indicate the respective percentages of voting power, or other basis of control, as required by the Instructions:

(a) All subsidiaries of the registrant.

(b) All parents of the registrant.

(a) All subsidiaries of Fansteel Metallurgical Corporation.		Percentage of Voting Power
Tantalum Corporation of America	(1)	100.00%
Ramet Corporation of America	(1)	100.00%
Vascoloy-Ramet Corporation	(2)	57.77%
Vascoloy-Ramet Corporation	(2)	8.88%
(b) None.		

Notes: (1) Included in consolidated financial statements.
(2) Separate financial statements submitted herein.

Management and Control

2. List the names and addresses of all directors and officers of the registrant. Indicate the office or offices held. If any person is both an officer and director, so state.

Name	Address	Office
Wm. Blair Baggaley	19 Warwick Avenue, Winnetka, Illinois	Director
Benjamin V. Becker	179 Lake Shore Drive, Chicago, Illinois	Director

(a) Options aggregating 11,000 shares of Common Stock, without par value.

(b) The option price is Five Dollars ($5.00) per share; the expiration date is December 31, 1937. There is no condition other than the payment of the option price.

(c) The holders of the options are as follows:

William Blair Baggaley
19 Warwick Avenue
Winnetka, Illinois
Option for 1,000 shares of Common Stock, without par value

Robert J. Aitchison
595 Lincoln Avenue
Glencoe, Illinois
Option for 10,000 shares of Common Stock, without par value

(d) The option to William Blair Baggaley was granted in consideration of advisory sales and promotional services rendered by Mr. Baggaley to the registrant.

The option to Robert J. Aichison was granted in consideration of his acceptance of position as Vice-President and General Manager of the registrant and the giving up by him of his private accounting practice.

Business

7. Describe briefly the material changes which may have occurred within the fiscal year in the general character of the business done by the registrant and its subsidiaries.

There have been no material changes within the fiscal year in the general character of the business of the registrant and its subsidiaries.

Financial Statements

8. Submit financial statements in accordance with the Instructions and the Rules and Regulations of the Commission supplementary thereto.

The following financial statements and schedules, certified by Wm. H. Thompson & Co., Certified Public Accountants, Auditors for the registrant, are submitted herewith:

(h) Schedule "VII"—Reserves.
(i) Schedule "VIII"—Capital Stock.
(j) Schedule "IX"—Surplus.
(k) Schedule "X"—Detail as to maintenance and repairs, etc.
(l) Schedule "XI"—Income from Dividends.

(2) The following exhibits:
All exhibits are inapplicable.

This annual report is filed subject to the instructions contained in the Instruction Book for Form 10-K for Corporations, and amendments numbered:

Signature

In pursuance of the requirements of the Securities Exchange Act of 1934, the registrant, Fansteel Metallurgical Corporation, a corporation organized and existing under the laws of New York, has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the City of Chicago and State of Illinois on the 23rd day of April, A. D. 1936.

Fansteel Metallurgical Corporation
By R. J. Aitchison,
By R. J. Aitchison,
Vice-President

Attest:
E. F. Radke,
E. F. Radke,
Secretary

(Stamp) Sec & Exhan Comm Recd 1st Mail Apr 27 1936
Docket Mail & Files.

156 SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 10-K

For Corporations

Annual Report
For Fiscal Year Ended December 31, 1936
Fansteel Metallurgical Corporation
(Name of Registrant)

North Chicago, Illinois
(Address of Principal Executive Offices)

New York, March 13, 1917
(The State or Other Sovereign Power under which Incorporated and Date of Incorporation)

Perpetual
(Date of Termination of Charter)

First Tuesday in April of Each Year in New York City
(Date and Place of Annual Meetings)

(Stamp) Sec & Exchan Comm Recd 1st Mail Apr 26 1937
Docket Mail & Files.

Table of Securities Registered

Securities Registered

Title of Issue	Amount as of close of Fiscal Year: Amount as to which registration is effective	Amount as of close of Fiscal Year: Amount to be registered upon notice of issuance	Names of Exchanges on which Registered
Common Stock	195,932 shares	38,068 shares	New York Curb Exchange

Name and address of person authorized to receive notices and communications from the Securities and Exchange Commission:

E. F. Radke, Secretary
North Chicago, Illinois.

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—1—

The information required to be given under the items herein set forth is more specifically defined in the "Instruction Book for Form 10-K for Corporations".

The Instruction Book also sets forth requirements as to exhibits which are to accompany the annual report.

Affiliations

1. List the following and indicate the respective percentages of voting power, or other basis of control, as required by the Instructions:

(a) All subsidiaries of the registrant.

(b) All parents of the registrant.

(a) All subsidiaries of Fansteel Metallurgical Corporation.		Percentage of Voting Power
Tantalum Corporation of America	(1)	100.00%
Ramet Corporation of America	(1)	100.00%
Vascoloy-Ramet Corporation	(2)	57.77%
Fansteel Mining Corporation	(1)	100.00%
Vascoloy-Ramet Corporation	(2)	8.88%

(b) None.

Notes: (1) Included in consolidated financial statements.
(2) Separate financial statements submitted herein.

Management and Control

2. List the names and addresses of all directors and officers of the registrant. Indicate the office or offices held. If any person is both an officer and director, so state.

Name	Address	Office
Robert J. Aitchison	595 Lincoln Avenue, Glencoe, Illinois	President and Director
Wm. Blair Baggaley	19 Warwick Avenue, Winnetka, Illinois	Director

(Stamp) Sec & Exchan Comm Recd 1st Mail Apr 26 1937 Docket Mail & Files.

The option for 10,000 shares of Common Stock, without par value, at $5.00 per share, was granted to Robert J. Aitchison on February 15, 1932 in consideration of his acceptance of the position of Vice-President and General Manager of the registrant and the giving up by him of his private accounting practice.

Business

7. Describe briefly the material changes which may have occurred within the fiscal year in the general character of the business done by the registrant and its subsidiaries.

There have been no material changes within the fiscal year in the general character of the business done by the registrant and its subsidiaries.

Financial Statements

8. Submit financial statements in accordance with the Instructions and the Rules and Regulations of the Commission supplementary thereto.

The following financial statements and schedules, certified by Wm. H. Thompson & Co., Certified Public Accountants, auditors for the registrant, are submitted herewith:

(1) Consolidated balance sheet of Fansteel Metallurgical Corporation and its subsidiaries, Ramet Corporation of America, Tantalum Corporation of America and Fansteel Mining Corporation, as at December 31, 1936.

Consolidating balance sheet of Fansteel Metallurgical Corporation and its subsidiaries, Ramet Corporation of America, Tantalum Corporation of America and Fansteel Mining Corporation, as at December 31, 1936.

(2) Consolidating statement of profit and loss of Fansteel Metallurgical Corporation and its subsidiaries, Ramet Corporation of America, Tantalum Corporation of America and Fansteel Mining Corporation, for the year ended December 31, 1936.

(3) Schedules accompanying consolidated and consolidating balance sheets, as follows:

(a) Schedule "I"—Investments in Securities of Affiliates.

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Corporations, and amendments numbered:

Signature

In pursuance of the requirements of the Securities Exchange Act of 1934, the registrant, Fansteel Metallurgical Corporation, a corporation organized and existing under the laws of New York, has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the City of Chicago and State of Illinois on the 23rd day of April, A. D. 1937.

Fansteel Metallurgical Corporation
By Robert J. Aitchison,
Robert J. Aitchison,
President

Attest:
E. F. Radke,
E. F. Radke,
Secretary.

160 BOARD EXHIBIT NO. 3.

6/9/37

UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, Washington, D. C., which Commission was created by the Securities Exchange Act of 1934 (15 U. S. C. A., Sec. 78a et seq), and official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, do hereby certify that attached is a full, true and complete copy of:

Facing sheet, pages 1 to 4, inclusive, and page 21 of registration statement filed with this Commission December 24, 1935 by Fansteel Metallurgical Corporation, pursuant to the

provisions of the Securities Exchange Act of 1934 as amended, under File No. 1-2331.

In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 13th day of May, A. D. 1937, at Washington, D. C.

Francis P. Brassor,
Secretary.

(Seal)

161 File No. .....

Form 10

For Corporations

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

APPLICATION FOR REGISTRATION PURSUANT TO SECTION 12 (B) AND (C) OF THE SECURITIES EXCHANGE ACT OF 1934

Fansteel Metallurgical Corporation
(Name of registrant)

Securities to Be Registered

Title of Issue, or Issues	Amount Issued	Amount Unissued
Common Stock, without par value		47,677 shares*

Names of Exchanges on Which Registration Applied For

New York Curb Exchange

Name and address of person authorized to receive notices and communications from the Securities and Exchange Commission:

E. F. Radke, Secretary
North Chicago, Illinois

* In addition to 175,921 issued shares and 11,000 unissued shares previously listed upon the New York Curb Exchange and registered on Form 10 File No. 1-2138.

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The information required to be given under the items hereinbelow set forth is more specifically defined in the "Instruction Book for Form 10, For Corporations."

Organization

1. Exact name of registrant: Fansteel Metallurgical Corporation.
2. Address of principal executive offices: North Chicago, Illinois.
3. The State or other sovereign power under which incorporated: State of New York.
4. Date of incorporation: March 13, 1917.
5. Date of termination of charter: Duration of charter is perpetual.
6. Date upon which fiscal year ends: December 31st of each calendar year.
7. Date and place of annual meetings: First Tuesday in April at Room 332, No. 120 Broadway, in the Borough of Manhattan, City and State of New York.
8. Name all securities exchanges upon which each class of securities of the registrant is temporary registered.

None. The Common Stock of the registrant is permanently registered upon the New York Curb Exchange.

9. Name all securities exchanges upon which each class of securities registered hereunder is to be registered:

New York Curb Exchange.

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10. List the following and indicate the respective percentages of voting power as required by the instructions:

(a) All subsidiaries of the registrant.
(b) All parents of the registrant.

(a) All subsidiaries of Fansteel Metallurgical Corporation.	Percentage of Voting Power.
Tantalum Corporation of America	100.00%
Ramet Corporation of America	100.00%
Vascoloy-Ramet Corporation	57.77%
Vascoloy-Ramet Corporation	8.88%

(b) None.

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History and Business

11. Describe briefly the general character of the business done by the registrant and its subsidiaries, and any substantial changes which may have occurred in the general character of the business within the preceding 5 years:

The registrant and its subsidiaries are now, and have during the last five years been, engaged in the development, refinement and manufacture of non-ferrous rare metals, including tantalum, columbium, tungsten, molybdenum, caesium and rubidium, and products thereof. The business engaged in includes (a) the extraction of such rare metals from their ores or commercial intermediate products by chemical, metallurgical and electro-metallurgical processes, many of which are either patented or secret; (b) the manufacture of rare metals into useful commercial form; (c) the manufacture of chemical compounds of the metals; (d) the manufacture of alloys into which the rare metals are incorporated; and (e) the fabrication of apparatus, equipment or parts made in whole or in part from such rare metals or their alloys. Among the fabricated products manufactured from such rare metals by the registrant are contact points for ignition systems, varied tantalum parts for chemical and rayon industries, molybdenum and special alloy wires for use in vacuum tubes, radios and commercial radio tubes, battery chargers and rectifiers. A large research laboratory is maintained for the further development of both the processes and products of the registrant and the extension of their uses. The company conducts its own sales organization, except in certain foreign countries where it operates through exclusive sales agents.

The Vascoloy-Ramet Corporation, one of the registrant's subsidiaries, is engaged in the manufacture of machine cutting tools and drawing dies and the manufacture of "Vascoloy-Ramet," a hard cutting carbide for use in such tools. The principal sales of the Vascoloy-Ramet Corporation are now made through Vanadium-Alloys Steel Company, as sales representative.

The changes which have occurred in the business of the registrant and its subsidiaries are as follows: During 1933, Balkeit Radio Company, a wholly owned subsidiary engaged in the manufacture and sale of radio receiving sets, was liquidated through bankruptcy proceedings. From 1930 to 1932, extensive development was had and patents obtained on connection with hard cutting carbide tools. Their patents were assigned to Ramet Corporation of America, which inaug-

urated the marketing of such hard cutting carbide tools. The business thus developed was taken over and carried on by Vascoloy-Ramet Corporation, a controlled but not wholly owned subsidiary, on October 1, 1933.

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Property

12. State briefly the general character and location of the principal plants and other important units of the registrant and its subsidiaries. If any principal plant or important unit is not held in fee, so state, and describe how held:

The plant and offices of the registrant are located at North Chicago, Illinois, occupying 7½ acres, extending along 22nd Street between the Chicago, North Shore & Milwaukee Railroad tracks and Commonwealth Avenue. The plant is owned in fee. All of the metallurgical and fabricating activities are carried on at the North Chicago plant. Included in the plant are the chemical building, two furnace and reduction buildings, a laboratory, machine shop, wire drawing department, steel and brick warehouses and storage sheds. The plant of the Vascoloy-Ramet Corporation is located in one of the buildings of the registrant.

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This application is filed subject to the instructions contained in the Instruction Book for Form 10 for Corporations, as approved under date of December 20, 1934, and as amended under dates of February 12 and 15, March 12, 15 and 30, April 4, 10, 19 and 24, and May 7, 1935.

Upon the basis of the statements and documents comprising this application the undersigned hereby applies for registration pursuant to section 12 (b) and (c) of the Securities Exchange Act of 1934 of the securities specified on the facing sheet of this application on the respective exchanges there specified.

December 23, 1935
(Date)

Fansteel Metallurgical Corporation,
(Signature of registrant)
By (Illegible)
(Name)
President.
(Title)

(Seal)
Attest:
E. F. Radke,
(Name)
Secretary.
(Title)

BOARD EXHIBIT NO. 4.

6/9/37

167 Standard Corporation Records Page 1019

(a)1933	64,956	17,604	5,749
§1932	74,149	18,285	6,008
‡1931	117,910	24,894	8,218
1930	116,579	19,787	4,805
†1929	62,854	19,145	2,387
1928	125,173	18,436	8,292

	Net Inc.	• Earn. per Share $7 Pfd.	Com.
	$	$	$
(a)1935	47,690	6.05	d0.16
(a)1934	40,782	5.18	d0.30
(a)1933	37,726	4.79	d0.36
§1932	45,905	5.83	d0.19
‡1931	79,629	10.11	0.13
1930	70,553	8.95	0.32
†1929	31,740	4.03	d0.48
1928	98,445	12.49	0.90

•Based on 7,879 preferred and 48,020 common shares.
†Includes 53 weeks ended Aug. 30.
‡69 weeks ended Dec. 26, 1931.
§53 weeks ended Dec. 31, 1932.
(a)Year ended approximately Dec. 31.
dDeficit.

Income Account, Years Ended:

	Dec. 28,'35	Dec. 29,'34
Oper. income	$ 70,138	$ 64,895
Other income	1,735	1,581
Total income	71,873	66,476
Depreciation	16,740	16,740
Amort. of sound equip.	.....	2,512
Federal taxes	7,443	6,442
Net income	47,690	40,782
Pfd. divs.	31,516	55,153
Surp. additions:		
Add'l. rent rev. pr. year	8,370	.....
Prov. for Provinc. inc. tax of pr. yr. not required	472	.....
Tax adj.	.....	426

Surp. deductions:		
Propor. of add'l. theatre oper. expends. for pr. yr.	2,211	.....
Head Office salaries pr. yr.	500	.....
Tax adj. pr. yrs.	489	.....
Prov. for Dom. inc. tax on add'l. net rev. pr. yr.	764	.....
Incr. in surp. for year	21,052	d13,945
Surp. from prev. year	26,827	40,772
P. & L. surp.	47,879	26,827
	*Earn. per Share	
7% pfd. stock	$6.05	$5.18
Common stock	d0.16	d0.30

*Based on 7,879 preferred and 48,020 common shares.
d Deficit.

Comparative Balance Sheet:

Assets—	Dec. 28,'35	Dec. 29,'34
Land, bldgs., eqp., etc.	$1,067,967	$1,067,967
Less res. for depr.	437,017	420,277
Land, bldgs., etc. (net)	$ 630,950	$ 647,690
Gdwl., franch., etc.	1,310,188	1,310,188
Current Assets—		
Cash	63,607	28,390
Mktble. securities (cost)	34,706	34,706
Accr. rents & int. rec.	5,785	4,599
Co.'s shr. earns. of theatres subj. to Famous Players Canadian Corp. agreement	7,782	10,455
Tot. curr. assets	$ 111,880	$ 78,150
Total assets	$2,053,018	$2,036,028

Liabilities—		
Pfd. stk. (par $100)	$ 787,900	$ 787,900
Com. stk. (par $25)	1,200,500	1,200,500
P. & L. surplus	47,879	26,827
Current Liabilities—		
Accts. pay. & accr.	130	115
Tax reserve	8,207	6,375
Divs. pay.	7,879	13,788
Unclaimed divs.	523	523
Tot. curr. liab.	$ 16,739	$ 20,801
Total liabilities	$2,053,018	$2,036,028
*Net wkg. cap.	$ 95,141	$ 57,349
Equity per pfd. share	$92.16	$89.48

*Based on current assets and current liabilities as above.
†Market value $35,350 in 1935 and $35,613 in 1934.

Certification of Accounts—Balance sheets certified by Gunn, Roberts & Co., Chartered Accountants.

Management.

Officers.

J. P. Bickell, President
R. W. Bolstad, Treas.
N. G. Barrow, Secy.

Directors.

J. P. Bickell — A. B. Coleman
W. D. Ross — H. H. Champ
C. W. Baud — J. P. Stedman

Annual Meeting—in April.
Fiscal Year ends on last Saturday in December.
Office—1205 Royal Bank Building, Toronto, Ont.

Fansteel Metallurgical Corp.
(Formerly Fansteel Products Co., Inc.)

History.

Originally incorporated under Illinois laws in 1907 as Pfanstiehl Electrical Laboratories; reincorporated in 1914, in Delaware as Pfanstiehl Co., and again in 1917, in New York as Pfansthiel Co., Inc. Name changed to Fansteel Products Co., Inc., July 5, 1918, and to present title Aug. 28, 1935.

Acquisitions and Corporate Changes.

Predecessor formed, or was instrumental in formation of, following companies:

Tungsten Manufacturing Co., Ltd., of London, England, formed in 1920 to purchase Fansteel foreign patent rights relating to tungsten contacts and manufacture thereof.

Balkeit Radio Co., organized on Feb. 1, 1929, to take over manufacture and sale of radio sets. Voluntary petition in bankruptcy was filed on Dec. 31, 1932, and final liquidation effected thereafter.

Tantalum Corp. of America, incorporated March 12, 1932.

Ramet Corp. of America, organized April 27, 1931, and controls:

Vascoloy-Ramet Corp., organized Aug. 26, 1933, upon settlement of patent litigation.

Subsidiaries.

Present subsidiaries are as follows:

	% Stock Owned
Ramet Corp. of America	100
Vascoloy-Ramet Corp.	66⅔
Tantalum Corp. of America	100

Affiliate.

Company owns 21.81% of outstanding preference stock, 21.09% of common stock and 32.5% of debentures of Tungsten Manufacturing Co., Ltd.

Business.

Company is engaged in extraction from ore of non-ferrous rare metals such as tungsten, tantalum, molybdenum, etc., and

refinement, development and manufacture of these metals and their alloys and products. In 1935, about half business volume was in tungsten products, one-fifth in molybdenum and one-fifth in tantalum.

Products in detail and outlets are:

(a) Tantalum, columbium, tungsten, molybdenum, caesium and rubidium in varied forms, including sheet, rod, powder and wire.

(b) Tungsten and silver contact points; special tungsten parts and units for chemical and electrical industries.

(c) Tantalum parts and units for chemical and electrical industries; special tantalum and tantalum alloy parts for use in rayon manufacture, including spinnerets and thread guides.

(d) Railway and industrial rectifiers used in railway signal work, telephone systems, etc.

(e) Hard cutting tantalum carbide nibs, tips, wearing surfaces, tools and wire drawing dies.

(f) Ferro-tantalum and ferro-columbium.

Patent Litigation Settled—All patent litigation between company and its subsidiary, Ramet Corp. of America, and General Electric Co. and Carboloy Co., relating to company's Ramet tantalum carbide products was settled Aug. 8, 1933. Following settlement, a contract was entered into with Vanadium-Alloys Steel Co. for consolidation of tantalum carbide divisions of this company, Ramet Corp. of America and Vanadium-Alloys Steel Co. whereby all manufacturing operations now are conducted at North Chicago, Illinois, by a new corporation, Vascoloy-Ramet Corp., and all sales and promotional activities are handled by Vanadium-Alloys Steel Co. This company owns two-thirds of capital stock of new company.

Business of Subsidiaries and Affiliates.

Ramet Corp. of America owns and controls patents and licenses for hard carbide cutting, drilling and grinding tools and dies.

Vascoloy-Ramet Corp. manufactures and sells products under patents of parent company and hard carbide nibs and tips for such tools.

Tantalum Corp. of America owns and deals in tantalite ore.

Tungsten Manufacturing Co., Ltd., owns Fansteel foreign patent rights relating to tungsten contacts and manufacture thereof.

Property.

Plant, located at North Chicago, Ill., occupies 7½ acres and is owned in fee. All metallurgical and fabricating activities are carried on at this plant, in one building of which is located plant of Vascoloy-Ramet Corp.

Funded Debt.

*$222,000 Fansteel Products Co., Inc. (predecessor) First & Coll. S. F. 6s, due Feb. 1, 1943. Int. Pay.—Feb. and Aug. 1. Redeemable at $110. Secured by first mortgage on company's plant and by deposit of entire capital stocks of Ramet Corp. of America and the Tantalum Corp. of America. Trustee—Continental Illinois National Bank & Trust Co., Chicago.

*Certain bank loans of the Balkeit Radio Co. (dissolved subsidiary), which were guaranteed by parent company, together with $50,000 bank loans of parent company were funded through issuance of $277,000 of these bonds in early 1933.

Note—$26,150, entire issue, Fansteel Products Co., Inc. (predecessor) 10-Yr. Conv. Deb. 7s, due Feb. 15, 1939, were called for payment at 103 and interest on June 15, 1936.

Capital Stock.

	Auth.	Outstdg.
$5 non-cum. pfd. (no par)	10,000 sh.	*7,546 sh.
Com. (no par)	†260,000 sh.	‡195,921 sh.

*Excluding 131 shares in treasury.

†Of which 38,677 shares are reserved for exercise of stock purchase warrants (27,677 sh.) and options (11,000 sh.).

‡Giving effect to sale of 20,000 shares with stock purchase warrants on Jan. 1, 1936.

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Number of Stockholders, April 15, 1936: preferred, 51; common, 479.

Capital Changes—Authorized common stock was increased to 160,000 shares from 40,000 shares Jan. 28, 1927, and stock split four for one. Authorized amount was further increased to 260,000 shares Jan. 24, 1929.

Issue of 10,000 no par $7 cumulative preferred shares was

created in August, 1929. Changed to $5 non-cumulative on Jan. 1, 1936, old preferred stockholders receiving common stock purchase warrants for purchase of one common share for each old preferred share held, as consideration for waiver of accrued dividends which amounted to $16.91 par share on Dec. 31, 1935.

Rights to Debentures—Stockholders of record January, 1929, had right, expiring Feb. 11, 1929, to subscribe to $10 principal amount of debentures for each share of stock held.

Stock Provisions.

Preferred stock has preference as to assets and non-cumulative dividends of $5 per annum (reduced from $7 in January, 1936), payable quarterly. Redeemable on 30 days' notice at $103 per share. Liquidation—Entitled to $103 per share. Sinking Fund provides that 5% of net earnings must be set aside each quarter, beginning Jan. 1, 1936, before payment of common dividends, for retirement or redemption of preferred. Restrictions—No dividends may be paid on common unless (a) full dividends at annual rate of $5 have been paid on preferred stock; and (b) sinking fund requirements have been appropriated and set apart. Voting Power—Has one vote per share.

Warrants—Holders of warrants given to old preferred stockholders as consideration for waiver of accrued dividends, and, to purchasers of 20,000 common shares on Jan. 1, 1936. have right, expiring Dec. 31, 1937, to total of 27,677 common shares at $10 per share, on basis of one common share for each warrant held. Subscription rights are subject to adjustment in event of concentration or dilution of common stock.

Options—Officer and director have right, expiring Dec. 31, 1937, to purchase total of 11,000 common shares at $5 per share.

Transfer Agents—(Pfd.) Continental Illinois National Bank & Trust Co., Chicago; (Com.) City National Bank & Trust Co., Chicago.

Registrar—Harris Trust & Savings Bank, Chicago, Ill.

Listed (Com.)—Traded on New York Curb Exchange.

Price Range.
(N. Y. Curb)

	High	Low
1934	4¼	1¼
1933	4⅜	1⅛
1932	2	¼
1931	11½	1¼
1930	13	8⅛
1929	24⅜	5⅛
1928	35	9⅛
1927	39⅝	20

Dividends.

1936 Payments—Preferred, March 31, June 30, Sept. 30 (declared) and Dec. 30 (declared), $1.25 each date, to stockholders consenting to dividend and other changes in preferred stock. Common, none to June 30.

Dividends Paid in Calendar Years:

	Com.		Com.
1928-35	...	1927	*$1.50
1927	$2.25	1926	*4.50

*Paid on old stock prior to 300% stock dividend paid April 30, 1927.

Any subsequent dividends will be published in Standard Dividend Sections.

Financial Statements.

Earnings, Years Ended April 30:

	Net Income	*Earn. per Share Pfd.	Com.
	$	$	$
1935	78,797	10.44	0.15
1934	d8,019	1.05	d0.35
1933	(a)24,262	(a)3.18	(a)d0.17
1932	‡d218,900	...	d1.36
1931	d19,510	...	d0.12
1930	240,772	...	1.50
1929	d357,085	...	d2.23
1928	d322,828	...	d2.02
1927	530,407	...	3.30
1926	1,069,725	...	†6.22

*Based on following shares:

	Pfd.	Com.
1935	7,546	175,921
1934	7,636	175,839
1933	7,630	175,827
1930-32	....	160,567
1926-29	....	160,000

†After allowing for dividends on preferred stock retired June 30, 1926.

‡After capitalizing Ramet development costs.

(a)Before $11,147 profit on debentures acquired; after such profit results per share on preferred and common were $4.64 and $d0.10, respectively.

d Deficit.

Consolidated Income Account, Years Ended Dec. 31 (incl. subs.):

	1935	1934
Net sales	.....	$ 565,171
Cost of sales	.....	399,763
Gross profit on sales	$ 257,760	165,408
Sell. exp.	60,786	46,268
Oper., gen'l & admin. exp.	66,658	71,218
Oper. income	130,316	47,922
Other income	33,337	17,218
Total income	163,653	65,140
Depreciation	40,087	41,048
Federal taxes	9,745	.....
Interest	18,149	32,111
Other deducts	16,875	.....
Net income	78,797	d8,019

d Deficit.

Comparative Consolidated Balance Sheet, Dec. 31 (incl. subs.):

Assets—	1935	1934
Land, bldgs., eqp., etc.	$1,225,394	$1,212,892
Less res. for depr.	482,126	450,221
Land, bldgs., etc. (net)	$ 743,268	$ 762,671
Gdwl., pats., etc.	915,722	915,722
Investments	330,596	331,796
Deferred chgs.	3,083	2,988

Current Assets—		
Cash	38,012	22,596
Due fr. affil. co. (curr.)	1,313	11,001
Creds. accts. (debit bals.)	1,022	1,041
Notes rec.	609	126
Accts. rec. (less res.)	64,438	46,090
Advs. & sundry rec.	2,207	2,306
Inventories (lower cost or mkt.)	285,664	286,723
Cash val. life ins.	12,238	9,925
Tot. curr. assets	$ 405,503	$ 378,808
Total assets	$2,398,172	$2,392,985
Liabilities—		
†Preferred stock	$ 679,140	$ 687,240
†Common stock	882,205	881,795
Funded debt	222,000	303,180
Res. for return of spools in cust. hands	3,733	3,811
Depos. on foreign sales contrs.	1,565	7,927
Surplus	490,371	414,274
Current Liabilities—		
Notes pay.	.....	32,066
Accts. pay.	25,556	19,790
Sink. fd. (curr.)	55,850	.....
Accruals	37,752	42,902
Total curr. liab.	$ 119,158	$ 94,758
Total liabilities	$2,398,172	$2,392,985
*Net wkg. cap.	$ 286,345	$ 285,050

*Based on current assets and current liabilities as above.
†Represented by following no par shares:

	1935	1934
Preferred	7,546	7,636
Common	175,921	175,839

Certification of Accounts—Reports contained certificates of Wm. M. Thompson & Co., Certified Public Accountants.

Management.

Officers.

R. J. Aitchison, Pres.
E. F. Radke, Secy.-Treas.
M. A. Durst, Asst. Secy.
A. J. Dowe, Asst. Treas.

Directors.

J. M. Troxel, Chmn.

W. B. Baggaley	R. J. Aitchison
B. V. Becker	A. G. McCaleb
R. Harrison	J. H. Strong
E. F. Radke	H. W. Chadbourne
M. L. Emerich	H. W. Blumenthal

Remuneration of Management, Year Ended Dec. 31, 1935:

Aggregate of directors (9)	$24,180
Aggregate of officers (3)	24,000
Aggregate of officers, other than directors (2)	5,850

Annual Meeting—First Tuesday in April, New York.
Fiscal Year ends Dec. 31; prior to 1933 ended April 30.
Main Office—North Chicago, Ill.
New York Office—120 Broadway.

General Information.

Foreign and Domestic Shipments Improved in 1935—March 27, 1936, J. M. Troxel, president of company, successor by name change to Fansteel Products Co., Inc., stated in his 1935 report that foreign tantalum shipments during year increased 25% over 1934 despite difficulties of doing business in Europe. Domestic sales of tantalum increased more than 70%. Export departments extended its activities to Japan, report said, where encouraging orders, though small in volume, already had been received. Domestic sales of tungsten and molybdenum electrical contacts showed an increase of 66⅔% in dollar volume during 1935 as compared with 1934. For same comparative periods general sales increased almost 50%. Company expanded its production to include silver and various alloy contacts, so that it now manufactures and markets a complete line of contacts for practically every use.

Business for January and February, 1936, report added, compared favorably with operations of like 1935 period and management looked forward to an enlarged and profitable business during remainder of 1936.

169 BOARD EXHIBIT NO. 5.

6/10/37.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIII-C-80) * *

STIPULATION.

It Is Hereby Stipulated and Agreed by and between counsel for Fansteel Metallurgical Corporation and counsel for the National Labor Relations Board that the following facts are stipulated:

1. That Fansteel Metallurgical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York and duly qualified to do business in the State of Illinois.

2. That Fansteel Metallurgical Corporation operates a plant at North Chicago, Illinois, and that approximately seventy per cent (70%) of the raw materials used in the manufacturing processes of said Corporation originates in states other than Illinois and in foreign countries, and that approximately thirty per cent (30%) of the raw materials used in the manufacturing processes of Fansteel Metallurgical Corporation originates in the State of Illinois.

170 3. That the cost of the raw materials used in the manufacturing processes of Fansteel Metallurgical Corporation for the calendar year of 1936 amounted to approximately Two Hundred and Fifty Thousand Dollars ($250,000.00).

4. That approximately seventy per cent (70%) of the finished products manufactured by Fansteel Metallurgical Corporation are shipped into states other than Illinois and into foreign countries. These products are divided approximately as follows:

(a) Tungsten products—approximately	52%
(b) Molybdenum products—approximately	20%
(c) Tantalum and tantalum products—approximately	22%
(d) Battery chargers, silver contacts, metal chemicals and other items—approximately	6%
Total	100%

5. That the value of the manufactured products during the first calendar year of 1936 amounted to approximately One Million Fifty Thousand Dollars ($1,050,000.00).

6. That the outbound shipments, both interstate and intrastate, from the plant of Fansteel Metallurgical Corporation at North Chicago, Illinois, are made by mail, express, truck and rail.

7. That the principal chemicals used in the manufacturing processes of Fansteel Metallurgical Corporation, including hydrofluoric and hydrochloric acids, ammonia and fuel oil, are delivered to the Company's plant by rail, in tank car lots.

171 8. That during the period from the date of organization of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America in July, 1936, until the evening of February 17, 1937, no employee or employees of the respondent were discharged from the respondent's employment by reason of their membership in said Lodge 66 or in any other labor organization, or by reason of their having engaged in concerted activities for collective bargaining, or in other activities authorized, approved or guaranteed by the National Labor Relations Act; it being expressly understood and agreed however that such stipulation shall not be taken or construed to provide any evidence or inference or constitute any agreement with respect to the reasons or basis for the discharge of any employees of the respondent during the evening of February 17, 1937, or thereafter.

It is expressly understood and agreed that this Stipulation shall be without prejudice to either party to the proceeding either (a) to object to the introduction into evidence of any portion of this Stipulation upon the ground of materiality, and (b) to offer additional evidence with reference to any of the matters and things in this Stipulation contained.

Wm. R. Walsh,
Counsel for National Labor Relations Board, Complainant.

Levinson, Becker, Peebles & Swiren and
Sidney H. Block,
Counsel for Fansteel Metallurgical Corporation, Respondent.

Dated: June 10, 1937.

172 BOARD EXHIBIT NO. 6.

6/10/37.

State of Illinois } ss.
County of Lake }

IN THE CIRCUIT COURT OF LAKE COUNTY.

Fansteel Metallurgical Corporation, A New York corporation, *Plaintiff*,

vs.

National Labor Relations Board, J. Warren Madden, John M. Carmody and Edwin S. Smith, as members of the National Labor Relations Board, Leonard C. Bajork, Regional Director of the 13th Region of the National Labor Relations Board and W. I. Walsh, attorney for the National Labor Relations Board, and T. E. Dudley, Trial Examiner for the National Labor Relations Board, *Defendants*. } No. 37939.

COMPLAINT.

To the Honorable, the Judges of the Circuit Court of Lake County, Illinois:

Fansteel Metallurgical Corporation, a New York corporation, complaining of National Labor Relations Board, J. Warren Madden, John M. Carmody and Edwin S. Smith, as members of the National Labor Relations Board, Leonard C. Bajork, Regional Director of the 13th Region of the National Labor Relations Board, W. I. Walsh, attorney for the National Labor Relations Board, and T. E. Dudley, Trial Examiner for the National Labor Relations Board, alleges that:

1. It is a corporation duly organized and existing under the laws of the State of New York and authorized and licensed to do business in the State of Illinois; that it is engaged, in the County of Lake, State of Illinois, in the
173 refinement, manufacture and sale of rare metals and chemical compounds of metals.

2. On February 18, 1937, the Plaintiff filed and presented in the Circuit Court of Lake County, Illinois, its Complaint against Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and certain other defendants, which Complaint and a Supplemental Complaint are now in hearing in Cause No. 37551 in this Court.

3. On or about May 18, 1937, the above mentioned cause entitled "Fansteel Metallurgical Corporation *vs.* Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al." No. 37551, was duly set for hearing before this Court on June 2, 1937, for disposition of all pending matters therein, including rules to show cause why certain persons should not be punished for contempt and Plaintiff's application for a Final Decree. Pursuant to such setting, hearings upon such rules to show cause in said proceedings were duly commenced on June 2, 1937 and have proceeded continuously to the date hereof and are, on the date hereof, continuing. The completion of the hearing now on trial will require at least three days beyond the date hereof.

4. On May 26, 1937, seven days before the trial of this case was scheduled to commence, the Defendant, National Labor Relations Board, issued and served upon the Plaintiff its Complaint and notice to appear for hearing on such Complaint before its Trial Examiner in the New Post Office Building in Waukegan, Illinois, at ten o'clock in the forenoon on June 7, 1937, based upon charges filed in the name of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Defendant in the above mentioned prior proceedings, and Meyer Adelman, respondent to a rule to show cause in said proceedings; which Complaint bears Case No. XIII-C-80. Thereupon, in accordance with the rules and
174 regulations of the Defendant, National Labor Relations Board, the respondent filed with the Regional Director of the Board for the 13th Region, the Defendant, Leonard C. Bajork, on May 27, 1937, its duly verified motion asking that the date of hearing before the Trial Examiner of said Board be adjourned from June 7, 1937 for a period of at least ten days in order that the aforementioned trial before this Court in the prior proceedings may continue and be completed and in order to afford to the Plaintiff a few days thereafter in which to prepare for the hearing before said Board. On May 28, 1937, Max Swiren, one of the counsel for said Plaintiff, filed with said Leonard C. Bajork his affidavit setting out that he and the other counsel representing the Plaintiff and the

officers of the Plaintiff and a large number of their witnesses would be required to attend and participate in the trial before this Court in the proceedings aforesaid and that their attendance would also be necessary at the hearing before the Trial Examiner of said Board. Thereupon, said Leonard C. Bajork did, on May 29, 1937, deny the Plaintiff's application for an adjournment.

5. On June 4, 1937, the Plaintiff renewed its application for an adjournment by telegraphic request to J. Warren Madden, one of the Defendants herein and Chairman of the National Labor Relations Board, to which application respondent has had no response whatsoever. On June 5, 1937, after the close of Court, counsel for the Plaintiff advised the Defendant, Leonard C. Bajork, that the aforementioned proceeding in this Court is still in trial before this Court and would continue for at least three days to come and that the counsel, officers and witnesses for the Plaintiff who would be required for its defense before the Trial Examiner of said Board would be required to continue in attendance at the trial before this Court, and upon the basis thereof renewed the application for an adjournment, which said Leonard C. Bajork thereupon denied.

175 6. On June 4, 1937, at the hour of 4:30 P. M., the Defendants herein caused one of their agents to present and serve upon Robert J. Aitchison, President of the Plaintiff, in the Circuit Courtroom of the Lake County Courthouse in Waukegan, Illinois, where the aforementioned proceedings are being heard, a subpoena duces tecum directing him to appear and produce on June 7, 1937, before said Trial Examiner of said Board, certain documents and records of the Plaintiff. At the time of the service of said subpoena, the Defendants knew full well of the pendency of the trial in said proceedings before this Court and the required attendance of said Robert J. Aitchison at such proceedings on behalf of this Plaintiff.

7. The only counsel for the Plaintiff sufficiently familiar with the matters and things involved in the proposed hearing before the Examiner of said Board to enable them properly to represent this Plaintiff without prejudice to its rights are the attorneys now engaged in the aforementioned proceedings before this Court, namely, Sidney H. Block, Harold M. Keele and Max Swiren. The attendance of substantially all of the respondents to the several rules to show cause in the aforementioned proceedings now on trial before this Court will be required on behalf of the Plaintiff in the presentation of its

defense before the Examiner of said Board, and such attendance cannot be procured without interference with, and contempt of, this Court in the trial of the aforementioned proceedings unless said hearing before the Trial Examiner of said Board is adjourned or otherwise postponed until after the conclusion of the trial aforesaid. All of the respondents in said proceeding now on trial were especially admonished by the Court to appear and be present at the resumption of trial on Monday, June 7, 1937, at the hour of 9:30 o'clock in the forenoon, and this matter has been brought to the attention of the Trial Examiner of said Board.

176 8. In and by said proceedings before the National Labor Relations Board, said Board is seeking to compel the Plaintiff to re-employ approximately ninety persons and compensate said persons at their prior rate of compensation for the period from February 27, 1937 to a date sometime in the future, beyond the present date, to be set by said Board; that by reason thereof, there is involved and in jeopardy in said proceedings before said Board, substantial property and property rights of the Plaintiff.

9. Notwithstanding the matters and things aforesaid, the Trial Examiner of said Board, one of the Defendants herein, did, on this date, at the hour of ten o'clock in the forenoon, open the aforementioned hearing of the National Labor Relations Board against the Plaintiff, Fansteel Metallurgical Corporation, in the New Post Office Building at Waukegan, Illinois. Notwithstanding a further application made to said Examiner for an adjournment of said hearing, the Defendants threaten and, unless enjoined by this Honorable Court, will continue during today and thereafter until completed the hearings before the Trial Examiner of said Board, which acts will: (a) seriously and irreparably damage the Plaintiff; (b) deprive the Plaintiff of its constitutional right to due process of law; (c) delay, interfere with and hamper the aforementioned proceedings now on trial before this Honorable Court; and (d) constitute an obstruction of justice and interference with the orderly procedure of the Circuit Court of Lake County, Illinois.

10. The Defendant, National Labor Relations Board, is an administrative body with certain quasi-judicial functions and is in no respect a court of law or justice.

11. If the injunction hereinafter prayed for be not issued immediately and without delay required for the giving of

notice, the rights of the Plaintiff will be seriously and
177 unduly prejudiced and the Plaintiff will suffer irreparable injury. No property rights of the Defendants in this proceeding are involved or will be affected by the granting of an injunction herein, and no damage can possibly result to them and by reason thereof an injunction bond ought not to be required upon the granting of the injunction hereinafter prayed.

Wherefore, the Plaintiff respectfully prays that an order may be entered by this Honorable Court, without notice to the Defendants and without requiring the Plaintiff to give bond, enjoining and restraining the Defendants and each of them and their respective counsel, employees and agents, or any of them, from holding or continuing any hearing or hearings upon the aforesaid Complaint against this Plaintiff until such time as the present trial in the aforementioned proceedings before this Court is concluded; and for such other and further relief as this Court may deem meet and proper.

Fansteel Metallurgical Corporation
By R. J. Aitchison (signed)
R. J. Atichison,
President.

Levinson, Becker, Peebles & Swiren,
Sidney H. Block,
Attorneys for Plaintiff.

178 State of Illinois }
County of Lake } ss.

R. J. Aitchison, being first duly sworn, on oath deposes and says:

(1) That he is the duly elected, qualified and acting President of Fansteel Metallurgical Corporation, a New York corporation, the Plaintiff in the foregoing Complaint and its duly authorized agent in this behalf.

(2) That he has read the forgoing Complaint by him subscribed and that he knows of his own knowledge that the facts therein contained are true.

R. J. Aitchison (signed)

Sworn to and subscribed before me this 7th day of June, A. D. 1937.

L. J. Wilmot (signed)
Circuit Clerk.

179 BOARD EXHIBIT NO. 7.

6/10/37.

INJUNCTION WRIT.

State of Illinois, } ss.
Lake County, }

The People of the State of Illinois: To National Labor Relations Board, J. Warren Madden, John M. Carmody and Edwin S. Smith, as members of the National Labor Relations Board, Leonard C. Bajork, Regional Director of the 13th Region of the National Labor Relations Board, W. I. Walsh, attorney for the National Labor Relations Board, and T. E. Dudley, Trial Examiner for the National Labor Relations Board, and to your attorneys, employees, servants and agents and to each and every one of them, Greeting:

Whereas, it has been represented to the Honorable Theodore Foeby, Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Lake County, in said Circuit, and State aforesaid, on the part of Fansteel Metallurgical Corporation, a New York corporation, Plaintiff in its complaint exhibited before said judge, and held in said Court against you, the said Fansteel Metallurgical Corporation, a New York corporation, to be relieved touching the matters therein complained of. In which said complaint is stated, among other things, that you are combining and confederating with others to injure the plaintiff, touching the matters set forth in the said complaint, and that your actings and doings in the premises are contrary to equity and good conscience, And whereas the said Judge, having under his hand, endorsed upon said complaint an order that a Writ of Injunction issued out of said Court, according to prayer of said complaint. We, therefore, in consideration thereof, and of the particular matters in said bill set forth, Do Strictly Command You, the said National Labor Relations Board, J. Warren Madden, John M. Carmody and Edwin S. Smith, as members of the National Labor Relations Board, Leonard C. Bajork, Regional Director of the 13th Region of the National Labor Relations Board, W. I. Walsh, attorney for the National Labor Relations Board, and Trial Examiner for the National Labor Relations Board, and the persons before men-

tioned, and each and every one of you, and all of your attorneys, employees, servants and agents, that You Do Absolutely Desist And Refrain From continuing or holding any hearing or hearings upon the Complaint of the National Labor Relations Board against Fansteel Metallurgical Corporation, being Case No. XIII-C-80, until the conclusion of the trial now on hearing before the Circuit Court of Lake County, Illinois, involving proceedings in Cause No. 37551 entitled "Fansteel Metallurgical Corporation *vs.* Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North
180 America, et al." until the Honorable Court shall make other order to the contrary. Hereof fail not under penalty of what the law directs.

To the Sheriff of said County to execute and return in due form of law.

Witness L. J. Wilmot, Clerk of said Circuit Court, and the seal thereof, at Waukegan in said County, this 7th day of June, 1937.

(Seal)

L. J. Wilmot,
Clerk.

181 BOARD EXHIBIT NO. 8.

6/18/37.

IN THE CIRCUIT COURT OF LAKE COUNTY.

• • (Caption—37939) • •

INJUNCTIONAL ORDER.

This matter coming on to be heard upon the verified Complaint of Fansteel Metallurgical Corporation and its motion for a temporary injunction, and it appearing to the Court that the right of the Plaintiff will be irreparably and unduly prejudiced unless this order is entered immediately and without delay or notice, and that no property rights of the Defendants will be affected by the entry of this order, and the Court being of the opinion that, for good cause shown, this order ought to be entered and the injunction entered without bond;

It Is Ordered, Adjudged and Decreed:

(1) That the Defendants, National Labor Relations Board, J. Warren Madden, John M. Carmody and Edwin S. Smith, as members of the National Labor Relations Board, Leonard

C. Bajork, Regional Director of the 13th Region of the National Labor Relations Board, W. I. Walsh, attorney for the National Labor Relations Board, and T. E. Dudley, Trial Examiner for the National Labor Relations Board, and the attorneys, employees, servants and agents of each of them, be,

and they are hereby enjoined and restrained from con-
182 tinuing or holding any hearing or hearings upon the Complaint of the National Labor Relations Board against Fansteel Metallurgical Corporation, being Case No. XIII-C-80, until the conclusion of the trial now on hearing before the Circuit Court of Lake County, Illinois, involving proceedings in Cause No. 37551 entitled "Fansteel Metallurgical Corporation *vs.* Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al."; and

(2) That a writ of injunction in accordance with this order issue forthwith from and under the seal of this Court.

Enter:

Theodore Farley,
Judge.

June 7, 1937.

183 BOARD EXHIBIT NO. 9.

6/11/37.

Serial No. R. 389

UNITED STATES DEPARTMENT OF LABOR
Frances Perkins, Secretary
Bureau of Labor Statistics
Isador Lubin, Commissioner

Review of Strikes in 1935

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Prepared by
Division of Industrial Relations
Florence Peterson, Chief

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[From the Monthly Labor Review (May 1936) of the Bureau of Labor Statistics, United States Department of Labor]

(Cut)

United States
Government Printing Office
Washington: 1936

184 Review of Strikes[1] in 1935

There were 2,014 strikes in the United States in 1935—the largest number in any year since 1921. The number of workers involved in the 1935 strikes (1,117,213), however, was almost 350,000 less than in 1934, and the number of man-days idle due to strikes in 1935 (15,456,337) was 4 million less.

This article presents an analysis of strikes in 1935, showing classifications by months, industries, states, cities, number of workers involved, major issues involved, duration, methods of negotiating settlements, results, and types of labor organizations involved. Comparative figures for the year 1934 were published in the Monthly Labor Review for January 1936. Figures for the years prior to 1934 are not

[1] The term "strike" is here used in the generic sense to include all stoppages of work due to labor disputes, whether initiated by the employers (lockouts) or by the workers.

at present available in a form corresponding with these classifications. The Bureau is now revising its satistics on strikes occurring since 1927 so that comparable data can be shown for each classification. (The data on hand are insufficient to attempt such revision for years preceding 1927).

At the present time the Bureau obtains notices of strikes from 670 daily newspapers, labor papers, and trade journals. Questionnaries are then sent out to the parties involved in the dispute to obtain detailed and first-hand information. Data are also obtained from Federal and State labor boards and conciliation services.

Verified information was not obtained on 44 cases where notices of strikes appeared in the public press, and these cases are not included in this report. Some of them were undoubtedly only threatened strikes which did not materialize, and the remainder were probably small strikes of little significance. With the exception of these, it is believed that the following tables include all the strikes occurring in the United States during 1935 which lasted as long as 1 day, and in which six or more workers were involved.

Monthly Trend

Strikes in 1935 followed the usual seasonal trend, showing an increasing number in the spring and summer months, with a peak figure of 239 in August, and then a decline with the advent of cold weather. Comparable figures on strikes in 1934 and 1935 by months are shown in table 1. In 1934 the month with the largest number of strikes was May (226); in 1935 it was August (239). The month with the fewest strikes in 1934 was February (94), and in 1935 it was December (90).

In September of each year an unusually large number of employees were involved in strikes. This was due to the general textile strike in September 1934 and the short but widespread bituminous-coal strike in September 1935.

Table 1.—Strikes in 1934 and 1935, by Months

Month	Number of strikes—				Number of workers involved in strikes—				Man-days idle during month	
	Beginning in month		In progress during month		Beginning in month		In progress during month			
	1934	1935	1934	1935	1934	1935	1934	1935	1934	1935
Year	1,856	2,014	----	----	1,466,695	1,117,213	----	----	19,591,949	15,456,337
January	98	140	132	213	81,650	81,194	106,734	92,630	822,400	720,778
February	94	149	143	232	89,562	64,238	160,713	96,533	867,912	836,498
March	161	178	222	277	91,539	53,089	128,886	98,457	1,237,055	966,980
April	210	180	283	294	185,282	67,857	229,552	124,174	2,333,230	1,178,851
May	226	174	329	307	145,830	102,491	234,264	151,163	1,956,868	1,697,845
June	165	189	276	319	56,244	48,917	119,509	129,784	1,565,601	1,311,278
July	151	184	277	317	180,268	70,046	250,328	141,829	2,221,863	1,297,730
August	183	239	297	377	80,071	74,313	162,980	150,835	2,188,239	1,191,663
September	150	162	259	311	423,915	453,820	480,318	514,427	4,136,108	3,027,040
October	187	190	297	332	69,441	48,223	104,207	133,742	909,459	1,562,908
November	130	142	229	274	37,869	38,279	94,494	100,732	969,061	1,003,852
December	101	90	201	210	35,004	14,746	73,279	61,782	384,353	660,911

Industries Affected

APPROXIMATELY 25 percent (497) of the strikes in 1935 were in the textile industries, about two-fifths of these being in the fabrics industries and three-fifths in the clothing industries. The next highest industry group in number of strikes was the transportation and communication industries, which had 198. Building and construction industries experienced 139 strikes, trade 138, the lumber industries 135, and the food industries 103.

There were more workers involved and more man-days of idleness because of strikes in the mining industries than in any other group. This was due to the general strike of bituminous-coal miners in September 1935.

The "interindustry" strike listed in table 2 was a 1-day strike of organized workers in stove plants, shoe plants, and clothing factories at Belleville, Ill., protesting the hiring of nonunion men by the Illinois Power & Light Co. to fill the places of strikers. The general strike listed was the 2-day general strike at Terre Haute, Ind., in July in sympathy with striking workers of the Columbian Enameling & Stamping Co.



Table 2.—Strikes in 1935, by Industry

Industry	Number of strikes beginning in 1935	Number of workers involved	Man-days idle during 1935
All industries	**2,014**	**1,117,213**	**15,456,227**
Iron and steel and their products, not including machinery	**67**	**16,892**	**314,897**
Blast furnaces, steel works, and rolling mills	9	5,023	36,702
Bolts, nuts, washers, and rivets	3	1,314	68,456
Cast-iron pipe and fittings	5	984	22,721
Cutlery (not including silver and plated cutlery), and edge tools	5	1,004	12,773
Forgings, iron and steel	2	647	18,776
Hardware	1	120	1,020
Plumbers' supplies and fixtures	5	276	3,363
Steam and hot-water heating apparatus and steam fittings	3	618	2,566
Stoves	14	3,006	61,888
Structural and ornamental metal work	3	800	17,800
Tools (not including edge tools, machine tools, files, and saws) (hand tools)	1	86	1,054
Wirework	3	229	1,810
Other	13	2,827	65,576
Machinery, not including transportation equipment	**50**	**16,159**	**315,744**
Agricultural implements	4	3,302	143,274
Electrical machinery, apparatus, and supplies	11	3,782	82,978
Foundry and machine-shop products	21	2,323	18,051
Radios and phonographs	8	4,207	72,994
Textile machinery and parts	1	62	930
Typewriters and parts			2,600
Other	5	2,483	54,917
Transportation equipment	**42**	**33,215**	**642,789**
Aircraft	1	1,700	6,800
Automobiles, bodies and parts	34	31,642	235,794
Cars, electric- and steam-railroad	1	150	750
Shipbuilding	4	4,099	295,906
Other	2	625	3,450
Nonferrous metals and their products	**44**	**7,488**	**147,139**
Aluminum manufactures	3	232	7,099
Brass, bronze, and copper products	8	729	18,214
Jewelry	5	2,431	40,926
Lighting equipment	6	397	1,519
Silverware and plated ware	1	28	5,396
Smelting and refining—copper, lead, and zinc	6	1,179	20,888
Stamped and enameled ware	9	2,124	87,777
Other	6	366	5,320
Lumber and allied products	**135**	**83,787**	**1,618,911**
Furniture	64	14,229	214,049
Millwork and planing	15	3,928	60,510
Sawmills and logging camps	39	42,689	1,515,730
Other	17	1,861	27,723
Stone, clay, and glass products	**35**	**11,833**	**345,940**
Brick, tile, and terra cotta	14	3,691	187,927
Glass	7	5,400	88,753
Marble, granite, slate, and other products	2	255	2,890
Pottery	7	2,149	94,541
Other	5	338	2,829
Textiles and their products	**497**	**200,938**	**3,634,958**
Fabrics:			
Carpets and rugs	4	3,956	23,316
Cotton goods	44	25,105	946,190
Cotton small wares			4,950
Dyeing and finishing textiles	15	2,664	31,780
Silk and rayon goods	97	29,416	549,193
Woolen and worsted goods	30	11,446	222,969
Other	12	2,593	37,319
Wearing apparel:			
Clothing, men's	59	14,127	114,124
Clothing, women's	81	66,232	944,079
Corsets and allied garments	1	271	1,355
Men's furnishings	9	1,407	14,344
Hats, caps, and millinery	21	3,651	97,664
Shirts and collars	39	22,562	256,008
Hosiery	31	6,635	271,145
Knit goods	20	1,254	20,227
Other	34	7,317	110,325
Leather and its manufactures	**78**	**16,307**	**250,929**
Boots and shoes	57	11,099	174,369
Leather	7	2,571	13,151
Other leather goods	14	2,637	71,409

Table 2.—Strikes in 1935, by Industry—Continued

Industry	Number of strikes beginning in 1935	Number of workers involved	Man-days idle during 1935
Food and kindred products	**193**	**26, 883**	**842, 189**
Baking	38	12, 998	565, 546
Beverages	7	448	52, 172
Canning and preserving	14	1, 373	24, 020
Confectionery	9	2, 088	27, 206
Flour and grain mills	7	739	22, 991
Ice cream	1	22	22
Slaughtering and meat packing	15	4, 564	111, 727
Sugar beet	1	48	871
Sugar refining, cane	2	3, 000	10, 500
Other	9	1, 403	26, 054
Tobacco manufactures	**5**	**992**	**35, 000**
Chewing and smoking tobacco and snuff	1	325	2, 755
Cigars	4	577	23, 245
Paper and printing	**32**	**5, 025**	**134, 543**
Boxes, paper	7	1, 221	13, 407
Paper and pulp	8	2, 373	85, 978
Printing and publishing:			
Book and job	9	406	22, 188
Newspapers and periodicals	19	968	8, 560
Other	9	517	4, 410
Chemicals and allied products	**8**	**932**	**5, 662**
Chemicals	2	534	4, 206
Fertilizers	1	16	256
Paint and varnishes	3	90	486
Other	2	92	714
Rubber products	**7**	**1, 305**	**18, 982**
Rubber boots and shoes	2	210	650
Rubber tires and inner tubes	1	190	2, 090
Other rubber goods	4	908	16, 242
Miscellaneous manufacturing	**67**	**9, 249**	**222, 789**
Electric light, power, and manufactured gas	10	2, 287	59, 817
Broom and brush	2	124	2, 832
Furriers and fur factories	20	1, 620	38, 177
Other	35	5, 218	121, 963
Extraction of minerals	**90**	**670, 514**	**4, 019, 333**
Coal mining, anthracite	33	50, 191	788, 724
Coal mining, bituminous	42	420, 574	2, 971, 449
Metalliferous mining	5	6, 660	191, 733
Quarrying and nonmetallic mining	6	1, 909	64, 202
Crude-petroleum producing	4	280	3, 225
Transportation and communication	**198**	**61, 225**	**959, 950**
Water transportation	122	29, 490	749, 534
Motor transportation	64	33, 850	202, 393
Electric railroad	4	611	5, 596
Steam railroad	1	28	56
Telephone and telegraph	3	30	94
Air transportation	1	69	1, 863
Radio broadcasting and transmitting	3	138	414
Trade	**136**	**15, 677**	**219, 132**
Wholesale	23	2, 979	43, 884
Retail	113	12, 698	175, 268
Domestic and personal service	**83**	**29, 965**	**281, 476**
Hotels, restaurants, and boarding houses	47	1, 954	32, 981
Personal service, barbers, beauty parlors	5	1, 400	10, 850
Laundries	16	3, 330	59, 406
Dyeing, cleaning, and pressing	13	12, 453	116, 870
Elevator and maintenance workers (when not attached to specific industry)	5	8, 413	37, 229
Other	7	1, 515	24, 160
Professional service	**23**	**1, 922**	**15, 838**
Recreation and amusement	18	1, 660	7, 399
Professional	3	156	2, 815
Semiprofessional, attendants, and helpers	2	106	5, 412
Building and construction	**139**	**17, 815**	**151, 632**
Buildings, exclusive of P. W. A	76	10, 576	78, 941
All other construction (bridges, docks, etc., and P. W. A. buildings)	63	7, 239	102, 691
Agriculture, etc	**29**	**11, 211**	**574, 389**
Agriculture	14	10, 424	91, 445
Fishing	10	9, 323	334, 874
Other	5	4, 464	48, 049
Relief work and W. P. A	**25**	**41, 153**	**402, 340**
Other nonmanufacturing industries	**17**	**896**	**8, 228**
Interindustry	**1**	**3, 000**	**3, 000**
General	**1**	**38, 000**	**42, 000**

States Affected

EACH of seven States experienced more than 100 strikes during 1935; in fact, more than half of the total number of strikes in the United States were in these seven States. New York, with 349, had more strikes during the year than any other State. Next in order was Pennsylvania with 320, followed by Ohio with 173, California with 137, New Jersey with 123, Massachusetts with 110, and Illinois with 106. There were more workers involved and more man-days of idleness because of strikes in Pennsylvania than in any other State.

Of the 25 strikes (shown in table 3) which extended into two or more States, with the number of workers involved in each State unknown, 16 were small and would affect very little the figures for any State. None of them involved more than 500 workers and nearly all of them extended into States with a large number of strikes. The other 9 strikes included 13,650 of the 16,282 workers in this group of 25 strikes. Of these nine, three were maritime strikes affecting California, Oregon, and Washington; one was a strike of cotton pickers in the South, centering in Arkansas; two were strikes of truck drivers in New York and neighboring States; one was a strike in the neckwear-manufacturing industry in New York and New Jersey; one a strike in ribbon mills in New Jersey and Pennsylvania; and the other a strike in the wallpaper-manufacturing industry in Illinois, Indiana, and Pennsylvania.

Table 3.—Strikes in 1935, by States

State	Number of strikes beginning in 1935	Workers involved —			Man-days idle during 1935	
		Number	Percent of total	Average per strike	Number	Percent of total
All States	[2] 2,014	1,117,213	100.0	555	15,456,337	100.0
Alabama	59	38,275	3.4	649	1,124,392	7.3
Arizona	2	260	(1)	130	6,650	(1)
Arkansas	7	6,371	.6	910	49,168	.3
California	137	29,487	2.6	215	479,677	3.1
Colorado	5	8,170	.7	1,634	56,764	.4
Connecticut	44	12,656	1.1	288	194,291	1.3
Delaware	2	345	(1)	173	1,965	(1)
District of Columbia	13	4,401	.4	339	10,521	.1
Florida	9	7,046	.6	783	290,070	1.9
Georgia	16	6,692	.6	418	182,236	1.2
Idaho	5	1,623	.1	325	6,373	(1)
Illinois	106	73,538	6.6	694	834,043	5.4
Indiana	41	46,448	4.2	1,133	350,207	2.3
Iowa	13	11,129	1.0	856	79,796	.5
Kansas	7	4,854	.4	693	39,507	.3
Kentucky	13	14,894	1.3	1,146	403,116	2.6
Louisiana	12	5,355	.5	446	138,251	.9
Maine	7	2,299	.2	328	25,717	.2
Maryland	27	9,456	.8	350	49,694	.3
Massachusetts	110	26,321	2.4	239	605,188	3.9
Michigan	55	17,226	1.5	313	187,325	1.2
Minnesota	35	6,028	.5	172	177,135	1.1
Mississippi	8	3,601	.3	450	62,378	.4
Missouri	45	16,438	1.5	365	230,291	1.5
Montana	7	2,130	.2	304	26,802	.2
Nebraska	2	282	(1)	141	2,613	(1)
Nevada	2	1,287	1	644	12,998	.1

[1] Less than 1/10 of 1 percent.

Table 3.—Strikes in 1935, by States—Continued

State	Number of strikes beginning in 1935	Workers involved			Man-days idle during 1935	
		Number	Percent of total	Average per strike	Number	Percent of total
New Hampshire	8	1,847	0.1	193	30,844	0.2
New Jersey	128	47,233	4.2	384	1,090,083	7.1
New Mexico	3	2,504	.2	835	16,902	.1
New York	349	140,299	12.6	402	1,498,133	9.7
North Carolina	16	5,215	.5	326	46,893	.3
North Dakota	3	1,622	.1	541	7,861	.1
Ohio	173	88,620	7.9	512	1,301,504	8.4
Oklahoma	15	5,638	.5	376	121,450	.8
Oregon	21	13,829	1.2	659	539,201	3.5
Pennsylvania	320	245,189	21.9	766	2,326,961	15.1
Rhode Island	21	3,512	.3	167	79,622	.5
South Carolina	11	5,050	.5	459	183,760	1.2
South Dakota	3	2,522	.2	841	25,777	.2
Tennessee	27	4,145	.4	154	125,815	.8
Texas	24	7,615	.7	317	156,408	1.0
Utah	3	2,828	.3	943	13,692	.1
Vermont	6	1,960	.2	327	32,809	.2
Virginia	12	12,765	1.1	1,064	85,342	.6
Washington	61	33,530	3.0	555	1,043,966	6.7
West Virginia	17	104,431	9.3	6,143	570,426	3.7
Wisconsin	46	10,275	.9	223	266,703	1.7
Wyoming	2	3,690	.3	1,845	18,420	.1
Extended across State lines (unable to determine number of workers in each State)	[1] 25	16,282	1.5	651	247,517	1.6

[1] The sum of this column is more than 2,014. This is due to the fact that 27 strikes which extended across State lines have been counted as separate strikes in each of the States affected, with the proper allocation of number of workers involved and man-days idle. In 25 of the total number which extended across State lines it was impossible to determine how many of the workers involved were employed in each of the various States into which the strike extended.

Cities Affected

FIGURES are shown in table 4 on strikes in 1934 and 1935 for each city which experienced as many as 10 strikes in either of those years. New York, with 201 in 1934 and 257 in 1935, experienced a much larger number of strikes in each of the 2 years than any other city in the country. Philadelphia, Cleveland, and Chicago were the next three cities in order of the number of strikes occurring in each of the 2 years. San Francisco had a large number of strikes each year; Detroit had a large number in 1934, but showed a significant decline in 1935, while Los Angeles experienced the opposite trend.

Because of the difficulty of classifying strikes by cities or other geographical areas, table 4 is presented in two sections. The first section shows for each city the strikes which were confined to that city. These figures do not tell the complete story for each city, however, because, in addition to strictly local strikes, most of the cities were affected by strikes which extended into two or more cities. There is no way of knowing for most of these intercity disputes the number of workers and man-days of idleness which should be allocated to each particular city. For this reason supple-

cities were involved; these are in addition to the local strikes shown in the first part of the table. New York, for example, was involved in 17 intercity strikes in 1935 in addition to the 257 strictly local strikes. In these 17 intercity strikes, 43,447 workers were involved and 741,857 man-days of idleness resulted, but no accurate statement can be made as to the number of these workers and man-days which should be allocated to the city of New York.

Table 4.—Strikes in 1934 and 1935 in Cities Which Had 10 or More Strikes in Either Year

City	Number of strikes beginning in—		Number of workers involved		Man-days idle during year	
	1934	1935	1934	1935	1934	1935
Strictly local strikes						
Akron	13	3	4,310	352	94,683	20,574
Baltimore	16	20	2,317	6,231	16,677	31,821
Birmingham	14	8	8,999	1,401	227,759	33,668
Boston	16	16	4,200	3,694	58,611	29,127
Buffalo	12	16	4,366	2,676	147,808	40,037
Chattanooga	11	8	2,755	434	45,221	16,772
Chicago	48	47	21,310	17,891	196,930	440,782
Cincinnati	13	17	2,382	6,288	57,289	95,834
Cleveland	67	66	30,727	28,490	428,956	538,022
Columbus	13	6	3,391	1,544	13,757	46,367
Detroit	44	26	16,954	6,514	227,542	113,968
Elizabeth, N. J	2	10	132	1,748	1,548	12,344
Fall River, Mass	12	7	6,385	632	45,774	1,844
Jersey City	4	10	306	431	3,355	10,600
Kansas City, Mo	12	10	1,540	582	7,377	8,347
Los Angeles	18	42	4,738	3,790	60,994	70,938
Milwaukee	42	21	13,980	3,952	307,002	69,587
Minneapolis	12	16	19,127	2,706	258,404	131,320
Newark, N. J	22	13	2,399	4,406	51,205	134,878
New Bedford	11	4	2,191	545	10,814	6,061
New York (Greater)	201	257	133,465	102,267	1,628,422	958,210
Paterson, N. J	7	18	1,541	16,661	26,815	282,044
Philadelphia	68	74	30,076	14,873	498,814	161,656
Pittsburgh	18	17	2,399	1,246	40,974	49,279
Portland, Oreg	16	10	2,807	403	25,207	7,970
Rochester	14	7	2,116	306	13,096	2,782
St. Louis	20	21	6,184	2,673	90,691	64,429
San Francisco (bay area)	42	60	97,665	11,549	328,826	142,291
Seattle	6	22	331	3,340	1,291	33,918
Scranton, Pa	10	3	1,625	233	25,353	1,785
Terre Haute, Ind	7	10	1,082	27,896	12,055	135,855
Toledo	14	18	5,147	8,034	58,545	125,949
Washington, D. C	22	13	3,175	4,401	60,329	10,521
Worcester, Mass	2	11	220	468	3,968	3,838
York, Pa	11	5	1,384	272	23,013	8,802
Intercity strikes [1]						
Akron	2		3,800		110,800	
Baltimore	2	5	550	1,247	2,840	19,139
Birmingham	3		23,100		725,800	
Boston	1	3	675	759	15,525	5,508
Buffalo	3	1	2,097	200	94,419	3,800
Chattanooga		1		158		3,634
Chicago	3	4	2,015	1,600	96,621	20,941
Cleveland	2	3	1,931	744	92,925	19,976
Columbus	2		1,700		41,800	
Detroit	1	1	242	44	10,164	176

[1] Intercity strikes in which the listed cities were involved in addition to the strictly local strikes. It is impossible to determine how many of the total number of workers and man-days of idleness should be allocated to each particular city. The general textile strike of 1934 is not included in this table since it is impossible to get data on this strike by cities, and since such a small proportion of the total number of workers involved worked in any one of the cities listed.

Table 4.—Strikes in 1934 and 1935 in Cities Which Had 10 or More Strikes in Either Year—Continued

City	Number of strikes beginning in—		Number of workers involved		Man-days idle during year	
	1934	1935	1934	1935	1934	1935
Intercity strikes—Continued						
Elizabeth, N. J.	1	3	2,000	609	16,000	29,288
Jersey City	3		3,700		44,000	
Kansas City		1		2,000		6,000
Los Angeles	3	7	14,800	3,038	870,800	125,146
Milwaukee	3	1	3,765	13	129,873	364
Minneapolis		3		872		10,535
Newark	6	6	20,347	6,564	285,739	430,343
New York	6	17	43,330	43,447	1,008,710	741,857
Paterson	1	2	25,000	1,350	675,000	10,350
Philadelphia	2	4	25,080	23,739	675,960	503,910
Pittsburgh		2		525		1,150
Portland (Oreg.)	4	12	14,907	37,159	873,047	1,466,740
St. Louis	1	4	1,700	656	11,900	15,430
San Francisco (bay area)	3	12	14,800	9,544	870,800	295,044
Seattle	5	9	15,077	38,957	878,911	1,516,429
Terre Haute		1		27		378
Toledo	3	2	1,742	594	30,164	8,476
Washington	1		470		1,880	
Worcester		1		11		33
York	4	3	28,382	6,285	267,122	413,416

Number of Workers

THE average number of workers involved in the 2,014 strikes which began in 1935 was 555. More than half of the strikes involved fewer than 100 workers each, but the average was raised considerably by the few large strikes of the year.

A distribution of the strikes in each industrial group according to the number of workers involved is shown in table 5. The 9 strikes each of which involved 10,000 or more workers were: The 1-day strike of 20,000 truck drivers in New York City in January; the general lumber strike in the Pacific Northwest which began in May; 4 strikes in the clothing industries (shirt-manufacturing employees in New York, New Jersey, Connecticut, and Pennsylvania in January; cotton-garment workers in Chicago in February; and 2 strikes of dress-manufacturing workers, 1 in April which extended into New York, New Jersey, Connecticut, and Pennsylvania, and the other in September in New York City); the 2-day general strike in Terre Haute, Ind., in July; and 2 strikes in the coal-mining industry (the general bituminous strike of September and the strike of 20,000 miners in Alabama, whose failure to obtain a settlement at the close of the general bituminous strike developed into a strike of their own which lasted for nearly 2 months).

Table 5.—Strikes Beginning in 1935, Classified by Number of Workers Involved

Industrial group	Total	Number of strikes in which the number of workers involved was—						
		6 and under 20	20 and under 100	100 and under 500	500 and under 1,000	1,000 and under 5,000	5,000 and under 10,000	10,000 and over
All industries	2,014	340	755	639	143	113	15	9
Manufacturing								
Iron and steel and their products, not including machinery	67	4	25	28	6	4	------	------
Machinery, not including transportation equipment	50	3	24	14	5	4	------	------
Transportation equipment	42	------	7	19	7	8	1	------
Nonferrous metals and their products	44	6	17	19	1	1	------	------
Lumber and allied products	135	17	49	49	14	5	------	1
Stone, clay, and glass products	35	3	14	14	2	2	------	------
Textiles and their products	497	80	187	192	34	26	4	4
Leather and its manufactures	78	9	30	29	8	2	------	------
Food and kindred products	103	27	33	31	3	8	1	------
Tobacco manufactures	5	------	1	4	------	------	------	------
Paper and printing	52	18	23	8	2	1	------	------
Chemicals and allied products	8	2	4	2	------	------	------	------
Rubber products	7	------	2	5	------	------	------	------
Miscellaneous manufactures	67	16	25	20	6	------	------	------
Nonmanufacturing								
Extraction of minerals	90	5	7	34	21	16	5	2
Transportation and communication	198	42	93	49	2	10	1	1
Trade	138	48	56	27	6	1	------	------
Domestic and personal service	93	36	32	13	6	4	2	------
Professional service	23	8	10	4	1	------	------	------
Building and construction	139	29	68	35	4	3	------	------
Agriculture, etc	29	2	6	11	1	9	------	------
Relief work	95	7	34	31	14	8	1	------
Other nonmanufacturing industries	17	8	8	1	------	------	------	------
Interindustry	1	------	------	------	------	1	------	------
General	1	------	------	------	------	------	------	1

Causes

Of the 2,014 strikes beginning in 1935, the major issues in 47.3 percent were union recognition and other matters pertaining to organization. The major causes in 38.2 percent were wages or hours. In the remaining strikes the major issues were sympathy with other strikes, questions of jurisdiction, union rivalry, and other miscellaneous causes or grievances.

Although nearly half of the strikes were called over union organization matters primarily, these strikes were small on the average, only about one-fourth of the total number of workers being included in this group.

Relatively few strikes were called because of dissatisfaction with working hours. Half of the workers who went on strike during the year did so primarily to obtain increased wages. The large bituminous-coal strike accounted for approximately 70 percent of the workers in this group. Excluding these 400,000 miners, more workers were involved in strikes due to union organization matters than strikes over wages and hours.

Table 6.—Major Issues Involved in Strikes Beginning in 1935

Major issues	Strikes		Workers involved	
	Number	Percent of total	Number	Percent of total
All issues	2,014	100.0	1,117,213	100.0
Wages and hours	**709**	**35.2**	**672,511**	**60.2**
Wage increase	364	18.1	564,080	50.0
Wage decrease	187	9.3	52,146	4.7
Wage increase, hour decrease	98	4.9	30,941	2.8
Wage decrease, hour increase	75	3.7	16,933	1.5
Hour increase	32	1.6	6,060	.5
Hour decrease	13	.6	2,351	.2
Organization	**953**	**47.3**	**393,122**	**35.2**
Recognition	189	9.4	36,629	3.3
Recognition and wages	194	9.6	68,370	6.1
Recognition and hours	7	.3	557	(1)
Recognition, wages, and hours	170	8.4	96,562	8.7
Closed shop	153	7.6	46,672	4.2
Violation of agreement	12	.6	8,313	.7
Discrimination	227	11.4	36,069	3.2
Miscellaneous	**283**	**14.5**	**151,840**	**13.6**
Sympathy	40	2.0	60,960	5.5
Different unions competing for control	12	.6	8,105	.7
Jurisdiction	25	1.2	3,459	.3
Other	216	10.7	79,016	7.1

[1] Less than 1/10 of 1 percent.

Duration

THERE were 2,003 strikes which ended in 1935 and the average duration of this group was nearly 24 calendar days. More than one-third of them ended in less than a week after they began and 57 percent lasted less than one-half month. There were 510 strikes which lasted a month or more.

The longest strikes, on the average, were in the industries manufacturing stone, clay, and glass products, where the average duration was 47.6 calendar days. The industrial group with the shortest strikes, on the average, was the group manufacturing chemicals and allied products, where the average duration was 10 calendar days.

In the group of 99 strikes (shown in table 7) which lasted for 3 months or more, the most important were the strike of employees of the New York Shipbuilding Corporation at Camden, N. J., which began in May and ended in August; [1] the general lumber strike in the Pacific Northwest which began in May and gradually came to a close through settlements with individual employers by the latter part of August; [2] the strike of workers employed by the National Biscuit Co. in New York, New Jersey, Pennsylvania, and Georgia, which began early in January and ended late in April; [3] and the strike of longshoremen in Gulf ports which began October 1 and came to a close in December.[4]

[1] See Monthly Labor Review for November 1935 (p. 1288).
[2] Ibid., September 1935 (p. 656).
[3] Ibid., June 1935 (p. 1534).
[4] Ibid., February 1936 (p. 392).

Table 7.—Duration of Strikes Ending in 1935

Industrial group	Total strikes	Average duration (calendar days)	Number of strikes with duration of—					
			Less than 1 week	1 week and less than ½ month	½ and less than 1 month	1 and less than 2 months	2 and less than 3 months	3 months or more
All industries	2,003	23.8	709	437	347	284	127	99
Manufacturing								
Iron and steel and their products, not including machinery	89	29.7	21	14	10	11	9	4
Machinery, not including transportation equipment	53	27.0	17	9	12	7	6	2
Transportation equipment	37	15.9	14	12	7	2	1	1
Nonferrous metals and their products	44	20.2	15	9	10	8	1	1
Lumber and allied products	133	27.5	34	29	24	32	7	7
Stone, clay, and glass products	37	47.6	6	8	3	8	5	7
Textiles and their products	457	28.0	139	117	86	73	41	31
Leather and its manufactures	81	26.6	28	14	16	12	6	5
Food and kindred products	102	25.7	30	18	15	21	4	8
Tobacco manufactures	5	46.8	------	1	1	2	------	1
Paper and printing	50	27.8	19	9	7	7	3	5
Chemicals and allied products	8	10.0	3	4	1	------	------	------
Rubber products	7	19.7	3	1	1	1	1	------
Miscellaneous manufactures	68	35.6	14	9	13	15	12	5
Nonmanufacturing								
Extraction of minerals	92	24.6	35	20	13	14	3	7
Transportation and communication	198	14.7	108	44	19	16	5	6
Trade	137	19.3	48	31	29	18	8	3
Domestic and personal service	92	21.7	38	13	18	14	4	5
Professional service	22	11.8	12	4	5	------	1	------
Building and construction	140	18.2	49	41	29	14	4	3
Agriculture, etc	28	14.9	12	5	6	5	------	------
Relief work	96	14.5	44	20	21	4	5	1
Other nonmanufacturing industries	16	10.3	9	5	1	------	1	------
Interindustry	1	1.0	1	------	------	------	------	------
General	1	2.0	1	------	------	------	------	------

Results

BECAUSE of the many complex factors involved in the causes and aims of a strike, it is sometimes very difficult to interpret accurately and to measure the degree of its success or failure. For instance, a group of workers may strike for union recognition, but may return to work without recognition when the employer offers them a wage increase or makes other concessions. Each of the opposing parties may, at the beginning or sometime during the progress of the dispute, demand much more than it expects or hopes to obtain, thus making it difficult to evaluate the terms of settlement with the original demands or expectations.

Also, the actual results of a strike may not be known for a considerable time after the dispute has ended and may be quite different from the apparent results at the close of the strike. Workers may return to work after a strike, appearing to have won none of their demands, yet the experience and the loss of production might influence the employer to give his employees better working conditions in

order to avoid interruptions in the future. On the other hand, workers may go back after a strike, having apparently won a complete victory, yet the strike may be the basis for the employer's decision to clean up a few odds and ends of work and then go out of business or move to a new locality. These far-reaching results cannot be measured or known. Any statistical measurement of the results of a strike must necessarily be based on the apparent results or terms of agreement at the close of the dispute, and these results must be measured in relation to the conditions existing and the demands made when the strike was called.

Because of the many intangible features inherent in the nature of labor disputes, the Bureau does not attempt categorically to define the results as successful or unsuccessful. Rather, an attempt is made to evaluate all the complex situations involved and to indicate the relative degree of gains or losses to workers resulting from the strike or lockout.

Of the 2,003 strikes ending in 1935, 44.3 percent resulted in substantial gains to the workers, 18.7 percent resulted in partial gains or compromises, and 33.4 percent resulted in little or no gains to workers. At least 15 percent of the first group were defensive strikes, that is, called in protest against wage reductions, violation of agreements, etc. Strictly speaking, the results of these strikes, although favorable to the workers, did not result in net gains over previous conditions. More than half of the 1,101,902 workers involved in the strikes ending in 1935 obtained substantially what they set out to gain and an additional one-fourth obtained partial gains or compromises.

The results of the 2,003 strikes which ended in 1935, in relation to the major issues involved, are shown in table 9. The proportion of strikes which resulted in substantial gains to workers was about the same in the wage and hour group as in the strikes over organization matters.

Table 8.—Results of Strikes Ending in 1935

Result	Strikes		Workers involved	
	Number	Percent of total	Number	Percent of total
Total	2,003	100.0	1,101,902	100.0
Substantial gains to workers	886	44.3	596,253	54.0
Partial gains or compromises	374	18.7	296,885	26.9
Little or no gains to workers	669	33.4	161,598	14.7
Jurisdiction or rival unions	37	1.8	11,640	1.1
Indeterminate	24	1.2	34,755	3.2
Not reported	13	.6	771	.1

Table 9.—Results of Strikes Ending in 1935 in Relation to Major Issues Involved

Major issues	Total	Number of strikes resulting in—					
		Substantial gains to workers	Partial gains to workers	Little or no gains to workers	Jurisdictional or rival union settlements	Indeterminate	Not reported
All issues	2,003	886	374	669	37	24	13
Wages and hours	780	347	188	237			8
Wage increase	368	174	76	113			5
Wage decrease	178	71	31	76			
Wage increase, hour decrease	96	45	23	27			1
Wage decrease, hour increase	73	34	13	26			
Hour increase	33	18	4	11			
Hour decrease	12	5	3	4			
Organization	945	434	171	330		5	4
Recognition	179	90	18	69		1	1
Recognition and wages	194	93	46	54			1
Recognition and hours	7	3	3	1			
Recognition, wages, and hours	168	83	41	43			1
Closed shop	151	74	20	55		1	1
Violation of agreement	14	10	3	1			
Discrimination	232	52	40	107		3	
Miscellaneous	256	104	83	83	37	19	3
Sympathy	42	14	11	10		7	
Different unions competing for control	12				12		
Jurisdiction	25				25		
Other	218	90	42	71		12	3
Not reported	1			1			

Methods of Negotiating Settlements

THE most common method of settling strikes in 1935 was through direct negotiations between employers and union representatives. Use of this method brought about settlements in 38.5 percent of the total number of strikes which ended during the year. Government conciliators and labor boards assisted in working out settlements in 31.3 percent of the total number. This group included many of the larger strikes, as evidenced by the fact that 59.4 percent of the workers obtained settlements through the assistance of Government conciliators.

Of the 627 strikes which Government conciliators or labor boards assisted in settling, 605 were settled by conciliation or mediation methods and 22 were settled by arbitration.

Thirty-seven strikes (1.8 percent of the total) were settled with the assistance of private conciliators or arbitrators. Seventeen of these were settled by conciliation methods and 20 by arbitration.

More than one-fifth of the strikes which ended in 1935 were terminated without formal settlements, and practically all of these strikes were lost by the workers. In some cases the workers returned to work under old conditions and with no formal settlements. In other cases the strikes were terminated and lost when employers liquidated their businesses or moved to other localities, the strikers being left to find new employment. In still other cases the strikes were lost when employers hired new workers to take the places of strikers.

Table 10.—Methods of Negotiating Settlements of Strikes Ending in 1935

Negotiations toward settlements carried on by—	Strikes		Workers involved	
	Number	Percent of total	Number	Percent of total
Total	2,003	100.0	1,101,902	100.0
Employers and workers directly	107	5.3	24,189	2.2
Employers and representatives of organized workers directly	769	38.5	264,972	24.0
Government conciliators or labor boards	627	31.3	554,188	50.4
Private conciliators or arbitrators	37	1.8	11,684	1.1
Terminated without formal settlement	457	22.8	146,400	13.3
Not reported	6	.3	469	(1)

[1] Less than 1/10 of 1 percent.

Labor Organizations Involved

In over three-fourths of the strikes which ended in 1935, American Federation of Labor unions were involved. Unions independent of the A. F. of L. were involved in 13 percent of the strikes, and 8 percent were carried on without union leadership. Many of the strikes in the latter group were on relief work and W. P. A. projects.

In most cases the union involved called a strike and furnished active leadership throughout the dispute. In some cases, however, strikes unauthorized by the proper union official were called by the workers and later the union gave formal endorsement and assisted in arranging the settlement. In still other cases the workers were unorganized at the beginning of the strike, but the union stepped in and offered leadership and assisted in obtaining the settlement as a means of organizing the workers. In table 11 the union which identified itself with a strike, either at the beginning or later, is regarded as the organization involved.

Table 11.—Strikes Ending in 1935 by Types of Labor Organizations Involved

Labor organization involved	Strikes		Workers involved	
	Number	Percent of total	Number	Percent of total
Total	2,003	100.0	1,101,902	100.0
American Federation of Labor	1,551	77.5	972,171	88.3
Railroad Brotherhoods	1	(1)	28	(1)
Independent	258	13.0	86,271	7.9
American Federation of Labor and another	11	.5	8,026	.7
Company unions	15	.7	2,440	.2
Organization involved but type not reported	2	.1	64	(1)
No organization	160	8.0	32,369	2.9
Not reported as to whether or not any organization was involved	5	.2	533	(1)

[1] Less than 1/16 of 1 percent.

BOARD EXHIBIT No. 10

198 6/11/37

Table 6.—Major Issues Involved in Strikes Beginning in 1935.

Major Issues	Strikes		Workers Involved	
	Number	Percent of total	Number	Percent of total
All issues	2,014	100.0	1,117,213	100.0
Wages and hours	769	38.2	672,511	60.2
Wage increase	364	18.1	564,080	50.0
Wage decrease	187	9.3	52,146	4.7
Wage increase, hour decrease	98	4.9	30,941	2.8
Wage decrease, hour increase	75	3.7	16,933	1.5
Hour increase	32	1.6	6,060	.5
Hour decrease	13	.6	2,351	.2
Organization	952	47.3	293,162	26.2
Recognition	189	9.4	36,629	3.3
Recognition and wages	194	9.6	68,370	6.1
Recognition and hours	7	.3	557	(1)
Recognition, wages, and hours	170	8.4	96,562	8.7
Closed shop	153	7.6	46,672	4.2
Violation of agreement	12	.6	8,313	.7
Discrimination	227	11.4	36,059	3.2
Miscellaneous	293	14.5	151,540	13.6
Sympathy	40	2.0	60,960	5.5
Different unions competing for control	12	.6	8,105	.7
Jurisdiction	25	1.2	3,459	.3
Other	216	10.7	79,016	7.1

(1)Less than 1/10 of 1 percent.

Source: United States Department of Labor, Bureau of Labor Statistics Monthly Labor Review, May, 1936, p. 1308.

199 BOARD EXHIBIT NO. 11.

6/11/37

Form 16

C 390457

Amalgamated Association of Iron, Steel
And Tin Workers of North America
(Steel Workers Organizing Committee)
3600 Grant Building : Pittsburgh, Pa

Date_____ 19_

I hereby accept membership in the Amalgamated Association of Iron, Steel & Tin Workers of North America, through the Steel Workers Organizing Committee, and of my own free will hereby authorize the Steel Workers Organizing Committee, its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment.

Employed by_____ _____
(Name of Company) (Plant)

_____ _____
(Address of Company) (Department)

If not working check ☐

_____
Name

_____
Address

_____
Organizer.

C No. 390457 Form 16
Member's
Receipt

Steel Workers Organizing Committee
3600 Grant Building, Pittsburgh, Pa.

This is to Certify that

_____
(Name of Member)

has accepted membership in the Amalgamated Association of Iron, Steel & Tin Workers of North America.

Date_____, 19_____

_____
Organizer.
(Union Label)

200 **BOARD EXHIBIT NO. 12.**

Agreement

This agreement is entered into by and between the Fansteel Metallurgical Corporation, party of the first part, hereinafter called the employer, and Lodge 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, hereinafter called the union, this day of 1936.

Section I. It is agreed that the Fansteel Metallurgical Corporation will recognize and deal with the Amalgamated Association of Iron, Steel, and Tin Workers of North America in the settlement of all disputes and bargaining on the question of hours of labor, rates of pay, and working conditions, and will recognize and deal with the officers of the above-named union on all matters affecting its members in connection with their employment.

Section II, Article I. Wage rates and overtime rates based upon classification of labor shall be worked out between a committee from the local union and the management that will be agreeable to both parties concerned, this work to be completed within thirty days of the acceptance of this agreement. All wages are to be paid weekly, preferably on Friday. A satisfactory pension system shall be worked out. No forman shall work on any machine.

Article II. An arrangement shall be worked out jointly for the purpose of adjudication of disputes, such to be done within sixty days. All employees shall continue at work without interruption pending the final disposition of such disputes. Failing to do so the union agrees to discipline any one violating this provision.

Article III. Any employee discharged shall have the right, within two days after notice of such discharge, to present his case to the tribunals that may be set up, and in the event it is decided that said employee has been unjustly discharged said employee shall be re-instated and compensated for all time lost at the rate of pay received while at work.

Section III. It is further agreed that the principle of the eight hour day and the forty hour week is hereby recognized and should be worked out on a practical basis by said committee in agreement with the management. All hours of work over eight hours a day shall be considered over time and shall be paid at the overtime rate of time and one-half. Work on

Saturday shall be rated as overtime an paid at the rate of
201 time and one-half. There is to be no work on Sundays and legal holidays except by men needed for the maintaining of the safety of the plant.

Section IV. Seniority rights to be classed from the time of entry into the service of the company and not from the time employed on any certain job, and the total disregard for loss of time caused by lack of work, sickness, or any temporary disability.

Section V. A proper ventilation system shall be instituted in every department, especially so to draw the smoke away from cutting machines. The ventilator fan in the cutting room is not adequate. Exhaust fans on all carbon jobs. Tantalum welding under CTC should have a better ventilating system installed. All welding shall be isolated. Hot water in wash rooms. Drinking water filtered and cooled. First aid kit in each department. Machinery kept in repair.

Section VI. It is further agreed that all employees of the Fansteel Metallurgical Corporation will be members of the Amalgamted Association of Iron, Steel, and Tin Workers of North America. New employees hired shall make their application for membership to the above-said union within fifteen days of the date of their employment. All dues of said employees shall be deducted monthly by the company from the pay checks and turned over to the financial secretary of the above-named union.

Section VII. The above-mentioned committee shall be impowered to make proper adjustments from time to time for the benefit of the employer and the union, strictly in adherence to the principles of collective bargaining.

Article II. In the event said committee fails to reach a satisfactory agreement in any controversy the question involved should be submitted for mediation and arbitration to a committee of five, two to be selected by the employer, two to be selected by the union, and the fifth to be selected by the four selected members of the committee; said fifth person so selected shall be one who shall have a neutral position in the matter. The decision of the committee shall be binding.

Article III. This agreement shall be operative for one year from the above-mentioned date.

_____

_____

_____

_____

_____

_____

202 BOARD EXHIBIT NO. 13.

6/11/37.

Plan of
Employe Representation
in
Waukegan Works
of
American Steel & Wire Company

Adopted by Employes
and
Accepted by Management
of
Waukegan Works
of
American Steel & Wire Company

As Constituting An Agreement
Between Management And Employes
For Collective Bargaining

February 23, 1934

203 Plan of

Employe Representation
Waukegan Works

American Steel and Wire Company

In order to give the employes of the American Steel and Wire Company a voice in regard to the conditions under which they labor, and to provide an effective means of collective bargaining between the management and employes on matters pertaining to industrial relations, the management of Wauke-

gan Works, American Steel and Wire Company, submitted to the Waukegan Works' employes a plan of employe representation. Under that plan the employes elected their representatives in June 1933. The plan was revised and adopted by the employes in February 1934. Under the revised plan, the employes elected their representatives in June 1934. The plan of employe representation as adopted by the employes, and as further amended by their duly elected representatives, is accepted by the management of the American Steel and Wire Company.

C. Blackmann,
President.

Property of .....

204

I.

Representation

1. Representation shall range from one Representative for each 100 employes in the small plants to one Representative for each 300 employes in the larger plants.

Minimum number of Representatives	5
Maximum number of Representatives	30

Such adjustments as may be necessary to meet special cases shall be made.

2. For the purpose of applying the unit of representation, the plant should be subdivided according to departments and natural sub-divisions. Wherever it is necessary to group a number of small departments in order to complete a unit of representation, regard shall be had to logical groupings and location.

3. Adjustment in units of representation shall be made in accordance with the recommendations of the Committee on Rules.

II.

Terms of Representatives.

1. Representatives shall be elected for a term of one year, and shall be eligible for re-election.

2. A Representative may be recalled by a two-thirds majority vote by secret ballot of the voters in his Department or unit. Such election for recall shall be called by the Committee

on Rules not sooner than fifteen days nor later than thirty days following its approval of a petition signed by two-thirds of the voters in the unit of representation of the Representative; said petition to state reasons for recall.

3. A Representative shall be deemed to have vacated office upon his appointment to such regular position as would bring him within the meaning of Paragraph 3, Section III, entitled: "Qualifications of Representatives and Voters".

4. Vacancies in the office of Representative may be filled, in the discretion of the Committee on Rules, by special elections conducted in the same manner as the general elections.

205

III.

Qualifications of Representatives and Voters

1. There shall be no restriction or limitation in the choice of representatives, except that they shall be American citizens and (except as provided in Paragraph 3, section 3.)

2. All employees who are enrolled on the Company's pay rolls shall be entitled to vote (except as provides Paragraph 3, Article 3.)

3. Company officials and persons having the right to hire or discharge shall not be eligible as Representatives or qualified to vote for Representatives.

4. This Plan shall in no way discriminate against any employe because of race, sex or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union or other organization.

IV.

Nominations and Elections

1. Nominations and elections shall be held annually.

2. Nominations shall be held on the second Monday and elections on the following Friday of the month selected. In the event of either of these days being a holiday, another day shall be selected by the Committee on Rules.

3. The total number of Employes' Representatives shall be chosen at each annual election.

4. The nominations and elections shall be conducted by the employes themselves, in accordance with these rules and regulations.

5. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to prevent any fraud in the casting or counting of ballots.

6. On the day of nominations, each duly qualified voter shall be furnished with a ballot stating the number of persons for whom he is entitled to vote, on which he shall write the names, or check number, of the person, or persons, whom he desires to nominate as Representative, or Representatives of his Department or unit.

7. A voter may place in nomination not more than the number of Representatives to which his Department, or
206 unit, is entitled.

8. If on any ballot, the same name is placed in nomination more than once, it shall be counted but once.

9. Should the number of persons nominated on any ballot exceed the permitted number as stated on the ballot, the ballot shall be void.

10. There shall be two persons nominated for every person to be elected.

11. Those who have received the largest number of votes up to twice the number of Representatives to be elected in the Department or District shall be declared nominated and shall be candidates for election.

12. On the day of elections, each duly qualified voter shall be furnished by the Committee on Rules with a ballot on which the names and check numbers of the candidates shall be printed in the order of number of votes received at nominations. The voter shall indicate his preference by placing a cross (X) opposite the names and check numbers of the candidates of his choice.

13. Candidates to the number of Representatives to which a Department, or unit, is entitled may be voted for and this number shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

14. Each voter shall deposit his own ballot in a box provided for the purpose by the Committee on Rules, and the ballots shall be counted under the direction and supervision of said Committee. The candidates receiving the highest number of votes shall be declared elected.

15. In the event of a tie or a controversy arising concerning any nomination or election, it shall be referred to and decided by the Committee on Rules.

16. The Committee on Rules may make such provision as

hey may consider necessary for assisting any voter who may o request, in properly marking his ballot.

V.

Management's Representative.

1. The Company shall appoint a Management's Representative. The Management's Representative shall keep the Management in touch with the Representatives, and represent the Management in negotiations with the Representatives, 07 the Officers and Committees. He shall respond promptly to any request from Representatives, and shall interview ll of them, from time to time, with reference to matters of oncern to employes.

2. The management of the works and the direction of the orking forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve mployes from duty because of lack of work, or for any legiimate reasons, is vested exclusively in the Management; and, xcept as expressly provided herein, these rights shall not be bridged by anything contained herein.

VI.

Committees

1. After each annual election, the Representatives shall mmediately meet for the purpose of electing a Chairman, ecretary, a General Committee, and Committee on Rules, and or selecting members of such other Committees as are found ecessary by the Committee on Rules for the consideration of he following subjects:

Rules.
Ways and Means.
Safety and Prevention of Accidents.
Economy and Waste Prevention.
Wages, Piece Work, and Tonnage Rates.
Hours of Employment and Working Conditions.
Housing and Living Conditions.
Health and Works Sanitation.
Education and Publications.
Athletics and Recreation.
Continuity of Employment and Condition of Industry.

2. The General Committee shall consider all matters not falling within the scope of any other Committees herein provided for, and the Chairman and Secretary of the Representatives shall be members of the General Committee.

3. Each Committee shall be composed of five members, and shall appoint its own Chairman and Secretary.

4. Vacancies on Committees shall be filled at a regular meeting of the Representatives.

5. Joint Committees shall consist of the Committees 208 of the Employees' Representatives with the addition of Representatives named by the Management, who may equal but shall not exceed in number the Employes' Representatives.

6. The General Committee of Employes' Representatives together with the General Committee of Management's Representatives shall constitute the General Joint Committee on Appeals.

7. The Joint Committees shall select their own officers and arrange their own procedure, subject to appeal, in case of controversy, to the Joint Committee on Rules.

8. Wherever the word "Committee" is used throughout this instrument, it shall mean the Committee of Employes' Representatives unless a "Joint Committee" is specified.

VII.

Committee Meetings

1. Regular meetings of Committees shall be held once a month.

2. On alternate months, the Committees shall meet as Joint Committees.

3. The Committee shall meet between the hours of three and five in the afternoon, unless otherwise arranged for on joint approval of the Chairman of the Employes' Representatives and the Management's Representative.

4. Special meetings of Committees and of Joint Committees may be held as occasion may require, on approval of the Chairman of the Employes' Representatives and the Management's Representatives.

5. For time necessarily lost by employes in actual attendance at regular meetings, or at special meetings of conferences jointly approved, Representatives shall receive from the Company payment commensurate with their average earnings.

6. Representatives shall have the right to appear before and be heard by a Committee considering matters of concern to the employes of the Department or unit they represent.

7. A Committee, when concerned with matters of special interest to any particular Department or class of employes, shall have the right of inviting into conference like Representatives of the Employes and of the Management likely to be specially interested in such matters.

209 8. Any matter may be referred by the Management through the Management's Representative to any Committee or Joint Committee for consideration and report, and any matter may be presented by a Committee or joint committee to the Management through the Management's Representative.

9. The Joint Committee on Rules shall arrange a suitable place for meetings of the Representatives, and of the several Committees and Joint Committees.

VIII.

Conferences.

A conference of Employees' Representatives of the plant or a conference of such Employees' Representatives and of Representatives of Management of the plant may be held from time to time as determined by the Committee on Rules or the Joint Committee on Rules, as the case may be. At such conferences, negotiations may be carried on between the Representatives of the employes and the Representatives of the Management on the subjects specified in Section VI, Paragraph 1.

IX.

Procedure for Adjustments

1. Any matter which, in the opinion of any employe, or any group of employes requires adjustment, and which such employe, or group of employes, has been unable to adjust, either directly or through his or their Representatives with the foremen of the work on which he or they are engaged, may be taken up by such employee, or group of his employes, either in person or through any Representative of his or their Department in writing.

First—With the Superintendent concerned.

Second—With the Management's Representative.

Third—With the Management, who shall endeavor to effect a settlement, or who may with the approval of all the parties refer the matter to proper Joint Committee.

2. Unless a satisfactory disposition of any such matter has been effected within a reasonable time, any employee through his Representative, or the Management through the Management's Representative, may require such matter to be referred to the General Joint Committee on Appeals
210 by a request in writing addressed to said Committee, specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said Committee.

The General Joint Committee on Appeals shall consider any such matter with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect a settlement.

3. If the General Joint Committee on Appeals shall fail to effect a settlement, the matter shall be referred to the President of the Company and the Employees' Representatives on the General Joint Committee on Appeals for settlement. If the President of the Company and the majority of the Employees' Representatives on the General Joint Committee on Appeals shall fail to effect a satisfactory settlement, they may refer the matter to arbitration.

X.

Guaranteeing the Independence of Employes and Representatives

It is understood and agreed that no employe will in any way be discriminated against for exercising any of his rights under this Plan.

It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each Representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the Superior

Officers, to the General Joint Committee and to the President of the Company.

Having exercised this right in the consecutive order indicated and failing a satisfactory remedy within thirty days, a Representative shall have the further right to appeal to the State Department of Labor or the Secretary of Labor of the United States. The Company shall furnish the said State Department of Labor or the said Secretary with every facility for the determination of the facts, and the findings and
211 recommendations of the said State Department of Labor or the said Secretary shall be final and binding.

XI.

Amendments

Any method of procedure hereunder may be amended as follows:

First, amendments relating exclusively to the employe organization may be made at any time by two-thirds vote of the Employe Representative Committee at a meeting duly called and held for such purpose.

Second, amendments relating to both employes and management may be made at any time by two-thirds vote of the Joint Committee at a meeting duly called and held for that purpose.

XII.

Right of Termination

This Plan shall be and remain in full force and effect unless and until terminated by a vote of the majority of the employes at any annual election.

212 Memoranda

213 BOARD EXHIBIT NO. 14.

6/11/37

(Letterhead of Fansteel Metallurgical Corporation, North Chicago, Ill.)

September 22, 1936

To Employees of Fansteel Metallurgical Corporation:

A certain group of our employees has presented for the consideration of the management a closed shop union agreement. This we can not agree to.

The rare metal business is scientific and highly specialized. We are not part of a large mass production industry such as steel. Our problems are different and unique. Four years ago there was doubt as to whether the company could survive its financial and business troubles. To-day, there is no question of its ability to provide employment and opportunity unless its progress is broken by internal troubles.

This request we feel makes it necessary for the management at this time to state its policy governing its relations with its employees to clarify the present situation:

(1) The management will not sign the closed shop agreement nor any agreement which has for its objective the virtual control of the relations of the company and its various employees. We will not enforce against loyal workers union domination through the forced operation of the "check-off" system of payroll deductions as practiced by the miners' unions. The company will not compel any employee to join any organization or to pay each week or month for the privilege of working in our plant. Fansteel is not and never has been a sweat shop. We want no discrimination or dictation against any of our loyal employees; nor any lessening of their free opportunity for individual progress with just reward for meritorious and conscientious service.

In the best interests of everyone concerned, management reserves its right to reward individual merit and efficient work, and to protect and preserve the rights of its individual workers. Likewise, management reserves the right to discontinue the services of any whose work, abilities or general conduct is not in keeping with the best interests of the business and its employees as a whole.

(2) We will continue to operate forty hours a week in ac-

cordance with the policy adopted voluntarily in 1933. All time over forty hours will be paid for at the rate of time and one-half.

We recognize the desirability of doing away with Saturday and Sunday work and an earnest effort will be made to enlarge our facilities to accomplish this. Obviously, emergency and rush work will control to some degree the realizing of this objective.

214 (3) Good work and length of loyal service have been regularly rewarded from time to time with wage increases to the fullest extent that competitive conditions and company finances would permit. The company will continue this policy of periodic reviews of wage schedules and appropriate adjustments will be made in order to maintain the highest possible standard of wage levels.

(4) It has always been the policy of the company to favor its old employees with first call on all of the advantages of employment wherever possible. Loss of time caused by lack of work, sickness or temporary disability has never influenced or affected unfavorably the company's regard or consideration of its senior employees.

(5) It has been the policy of the company to provide adequate and safe equipment and to maintain the equipment in good order to the fullest extent of its available finances. In the past eight months many improvements have been installed and more are going in daily. Ventilation, dust-extraction and fume extraction systems will be installed wherever necessary. Likewise, exhaust or ventilating fans will be installed on all carbon jobs. All arc-welding (where not now isolated) will be isolated. Hot water is being installed in wash rooms; cooled drinking water provided; adequate first aid established; machinery kept in good repair for safety and proper work; and similar desirable safeguards for health and safety and comfort carried forward to completion.

(6) We have always made it easy for employees to reach the highest company officers. We will continue this policy of an open door for the consideration of any grievance or suggestion.

It is the sincere hope of the company that this re-statement of policy will promote a clearer understanding, and reassure our people of the company's very sincere interest in their well-being and general progress.

Fansteel Metallurgical Corporation,
Robert J. Aitchison,
President.

215 BOARD EXHIBIT NO. 15.

6/11/37

A Plan of Employee Representation Which Has Been Pronounced Successful in a Large Number of Plants

I.

Representation

1. Representation shall range from one Representative for each 100 employes in the small plants to one Representative for each 300 employes in the larger plants.

Minimum number of Representatives	5
Maximum number of Representatives	30

Such adjustments as may be necessary to meet special cases shall be made.

2. For the purpose of applying the unit of representation, the plant should be subdivided according to departments and natural sub-divisions. Wherever it is necessary to group a number of small departments in order to complete a unit of representation, regard shall be had to logical groupings and location.

3. Adjustment in units of representation shall be made in accordance with the recommendations of the Committee on Rules.

II.

Terms of Representatives

1. Representatives shall be elected for a term of one year, and shall be eligible for re-election.

2. A Representative may be recalled by a two-thirds majority vote by secret ballot of the voters in his Department or unit. Such election for recall shall be called by the Committee on Rules not sooner than fifteen days nor later than thirty days following its approval of a petition signed by two-thirds of the voters in the unit of representation of the Representative; said petition to state reason for recall.

3. A Representative shall be deemed to have vacated office upon his appointment to such a regular position as would bring him within the meaning of Paragraph 3, Section III, entitled: "Qualifications of Representatives and Voters."

4. Vacancies in the office of Representative may be filled, in the discretion of the Committee on Rules, by special elections conducted in the same manner as the general elections.

III.

Qualifications of Representatives and Voters

1. There shall be no restriction or limitation in the choice of representatives, except that they shall be American and except as provided in Paragraph 3, Section 3.
2. All employees who are enrolled on the Company's pay rolls shall be entitled to vote (except as provides Paragraph 3, Article 3.)
3. Company officials and persons having the right to hire or discharge shall not be eligible as Representatives or qualified to vote for Representatives.
4. This Plan shall in no way discriminate against any employe because of race, sex or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union or other organization.

IV.

Nominations and Elections

1. Nominations and elections shall be held annually.
2. Nominations shall be held on the second Monday and elections on the following Friday of the month selected. In the event of either of these days being a holiday, another day shall be selected by the Committee on Rules.
3. The total number of Employes' Representatives shall be chosen at each annual election.
4. The nominations and elections shall be conducted by the employes themselves in accordance with these rules and regulations.
5. Nominations and elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any fraud in the casting or counting of ballots.
6. On the day of nominations, each duly qualified voter shall be furnished with a ballot stating the number of persons for whom he is entitled to vote, on which he shall write the name, or check number, of the person, or persons, whom

he desires to nominate as Representative, or Representatives of his Department or unit.

7. A voter may place in nomination not more than the number of representatives to which his Department, or unit is entitled.

216 8. If on any ballot, the same name is placed in nomination more than once, it shall be counted but once.

9. Should the number of persons nominated on any ballot exceed the permitted number as stated on the ballot, the ballot shall be void.

10. There shall be two persons nominated for every person to be elected.

11. Those who have received the largest number of votes up to twice the number of Representatives to be elected in the Department or District shall be declared nominated and shall be candidates for election.

12. On the day of elections, each duly qualified voter shall be furnished by the Committee on Rules with a ballot on which the names and check numbers of the candidates shall be printed in the order of number of votes received at nominations. The voter shall indicate his preference by placing a cross (X) opposite the names and check numbers of the candidates of his choice.

13. Candidates to the number of Representatives to which a Department, or unit, is entitled may be voted for, and this number shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

14. Each voter shall deposit his own ballot in a box provided for the purpose by the Committee on Rules, and the ballots shall be counted under the direction and supervision of said Committee. The candidates receiving the highest number of votes shall be declared elected.

15. In the event of a tie or a controversy arising concerning any nomination or election, it shall be referred to and decided by the Committee on Rules.

16. The Committee on Rules may make such provision as they may consider necessary for assisting any voter who may so request, in properly marking his ballot.

V.

Management's Representative

1. The Company shall appoint a Management's Representative. The Management's Representative shall keep the

Management in touch with the Representatives, and represent the Management in negotiations with the Representatives, their Officers and Committees. He shall respond promptly to any request from Representatives, and shall interview all of them, from time to time, with reference to matters of concern to employes.

2. The management of the works and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employes from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Management; and, except as expressly provided herein, these rights shall not be abridged by anything contained herein.

VI.

Committees

1. After each annual election, the Representatives shall immediately meet for the purpose of electing a Chairman, Secretary, a General Committee, and a Committee on Rules, and for selecting members of such other Committees as are found necessary by the Committee on Rules for the consideration of the following subjects:

Rules.
Ways and Means.
Safety and Prevention of Accidents.
Economy and Waste Prevention.
Wages and Piece Work.
Hours of Employment and Working Conditions.
Housing and Living Conditions.
Health and Works Sanitation.
Education and Publications.
Athletics and Recreation.
Continuity of Employment and Condition of Industry.

2. The General Committee shall consider all matters not falling within the scope of any other Committees herein provided for, and the Chairman and Secretary of the Representatives shall be members of the General Committee.

3. Each Committee shall be composed of five members, and shall appoint its own Chairman and Secretary.

4. Vacancies on Committees shall be filled at a regular meeting of the Representatives.

5. Joint Committees shall consist of the Committees of the

Employees' Representatives with the addition of Representatives named by the Management, who may equal but shall not exceed in number the Employes' Representatives.

217 6. The General Committee of the Employes' Representatives together with the General Committee of Management's Representatives shall constitute the General Joint Committee on Appeals.

7. The Joint Committees shall select their own officers and arrange their own procedure, subject to appeal, in case of controversy, to the Joint Committee on Rules.

8. Wherever the word "Committee" is used throughout this instrument, it shall mean the Committee of Employes' Representatives unless a "Joint Committee" is specified.

VII.

Committee Meetings

1. Regular meetings of Committees shall be held once a month.

2. On alternate months, the Committees shall meet as Joint Committees.

3. The Committee shall meet between the hours of three and five in the afternoon, unless otherwise arranged for on joint approval of the Chairman of the Employes' Representatives and the Management's Representative.

4. Special meetings of Committees and of Joint Committees may be held as occasion may require, on approval of the Chairman of the Employes' Representatives and the Management's Representatives.

5. For time necessarily lost by employes in actual attendance at regular meetings, or at special meetings of conferences jointly approved, Representatives shall receive from the Company payment commensurate with their average earnings.

6. Representatives shall have the right to appear before and be heard by a Committee considering matters of concern to the employes of the Department or unit they represent.

7. A Committee, when concerned with matters of special interest to any particular Department or class of employes, shall have the right of inviting into conference the Representatives of the Employes and of the Management likely to be specially interested in such matters.

8. Any matter may be referred by the Management through the Management's Representative to any Committee or Joint

Committee for consideration and report, and any matter may be presented by a Committee or joint committee to the Management through the Management's Representative.

9. The Joint Committee on Rules shall arrange a suitable place for meetings of the Representatives, and of the several Committees and Joint Committees.

VIII.

Conferences.

A conference of Employees' Representatives of the plant or a conference of such Employees' Representatives and of Representatives of Management of the plant may be held from time to time as determined by the Committee on Rules or the Joint Committee on Rules, as the case may be. At such conferences, negotiations may be carried on between the Representatives of the employes and the Representatives of the Management on the subjects specified in Section VI., Paragraph 1.

IX.

Procedure for Adjustments

1. Any matter which, in the opinion of any employe, or any group of employes requires adjustment, and which such employe, or group of employes, has been unable to adjust, either directly or through his or their Representatives with the foremen of the work on which he or they are engaged, may be taken up by such employee, or group of employes, either in person or through any Representative of his or their Department in writing.

First—With the Superintendent concerned.

Second—With the Management's Representative.

Third—With the Management, who shall endeavor to effect a settlement, or who may with the approval of all the parties refer the matter to proper Joint Committee.

2. Unless a satisfactory disposition of any such matter has been effected within a reasonable time, any employee through his Representative, or the Management through the Management's Representative, may require such matter to be referred to the General Joint Committee on Appeals by a request in writing addressed to said Committee, specifying in

detail the matter requiring adjustment and the reasons which warrant its consideration by said Committee.

The General Joint Committee on Appeals shall consider any such matter with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect a settlement.

218 3. If the General Joint Committee on Appeals shall fail to effect a settlement, the matter shall be referred to the President of the Company and the Employees' Representatives on the General Joint Committee on Appeals for settlement. If the President of the Company and the majority of the Employees' Representatives on the General Joint Committee on Appeals shall fail to effect a satisfactory settlement, they may refer the matter to arbitration.

X.

Guaranteeing the Independence of Employes and Representatives

It is understood and agreed that no employe will in any way be discriminated against for exercising any of his rights under this Plan.

It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each Representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the Superior Officers, to the General Joint Committee and to the President of the Company.

Having exercised this right in the consecutive order indicated and failing a satisfactory remedy within thirty days, a Representative shall have the further right to appeal to the State Department of Labor or the Secretary of Labor of the United States. The Company shall furnish the said State Department of Labor or the said Secretary with every facility for the determination of the facts, and the findings and recommendations of the said State Department of Labor or the said Secretary shall be final and binding.

XI.

Amendments

Any method of procedure hereunder may be amended as follows:

First, amendments relating exclusively to the employe organization may be made at any time by two-thirds vote of the Employe Representative Committee at a meeting duly called and held for such purpose.

Second, amendments relating to both employes and management may be made at any time by two-thirds vote of the Joint Committee at a meeting duly called and held for that purpose.

XII.

Right of Termination

This Plan shall be and remain in full force and effect unless and until terminated by a vote of the majority of the employes at any annual election.

219 BOARD EXHIBIT NO. 16.

6/15/37.

National Lodge
N. A.
Amalgamated Association
of
Iron, Steel and Tin Workers

To whom it may concern:

THE NATIONAL LODGE OF NORTH AMERICA
doth hereby grant
This Warrant or Dispensation to the

Following persons who shall constitute North Chicago Lodge No. 66 of the State of Illinois located at North Chicago

John Kondrath President ..... Treasurer
Clarence Dreyer Vice Pres't ..... Guide
Ed. Ruck Recording Sec'y ..... Inside Guard
Carl Swanson Financial Sec'y ..... Outside Guard

and to their successors, who shall faithfully Watch and Guard the Principles of this Order. Your Lodge shall be entitled to a direct representation to the National Lodge of North America in accordance with the Constitution and Laws thereof for

the purpose of making Laws and regulating the Workers and Ceremonies of the Order. We therefore command you to act wisely, be diligent, benevolent, not holding anything back which would benefit our Craft and Fellow Workmen.

In Witness Whereof we hereby have subscribed our names and affixed the seal of the National Lodge of North America.

Done in Pittsburgh this Twenty-fourth day of July, Anno Domini 1936.

Louis Leonard
Secretary-Treasurer,
National Lodge

(Seal)
M. J. Tighe
President, National Lodge

This is a true copy of the charter of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America.

John Kondrath,
President, Lodge 66.

Attest:
Carl Swanson,
Finan. Sec'y, Lodge 66.

220 BOARD EXHIBIT NO. 17.

6/11/37.

Agreement

This agreement is entered into by and between the Fansteel Metallurgical Corporation, hereinafter called the company, and Lodge 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, hereinafter called the union.

I. It is agreed that the company recognize the union and bargain collectively with the bargaining committee selected by the union on the question of hours of labor, rates of pay, working conditions, and other matters affecting employment.

II. Employees shall not be discharged until their individual cases have been discussed and agreed to by the employer and the union, with the exception of cases where discharge is caused by lack of work.

III. The principal of the eight hour day and the forty hour week is hereby recognized. All hours of work over eight hours each day and all work on Saturdays shall be considered overtime and shall be paid at the rate of time and one-half. Work on Sundays and legal holidays shall be paid at the rate of double time.

IV. Seniority rights to be classed from time of entry into the service of the company and not from the time employed on any certain job. Loss of time caused by lack of work, sickness, or any temporary disability shall not affect seniority standing. Seniority classification to be made by the company within sixty days from date.

V. The company agrees to install adequate equipment to provide safety, health and comfort within ninety days as per rider attached.

221 VI. The company agrees to deduct union dues from the pay check of the members of the union and to turn said amount over to the financial secretary of the union.

VII. If the parties to this agreement fail to agree, the question involved is to be submitted for mediation and arbitration to a committee of five, two to be selected by the employer, two to be selected by the union, and the fifth to be selected by four selected members of the committee. The decision of the committee shall be binding.

VIII. This agreement shall be operative for one year from this date. Dated North Chicago, Lake County, September , 1936.

Lodge 66, Amalgamated Association of Iron, Steel, and Tin Workers of North America.	Fansteel Metallurgical Corporation.
President.	
Recording Secretary	

222 Rider

This rider is part of an agreement between the Fansteel Metallurgical Corporation and Lodge 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America.

I. Ventilation or dust-extracting, also fume-extracting systems shall be installed wherever necessary. Exhaust or ventilating fans to be installed on all carbon jobs.

II. All arc-welding shall be isolated.

III. Hot water to be supplied in wash rooms. Filtered and cooled drinking water is to be provided.

IV. Adequate first aid department or departments to be established.

V. Machinery to be kept in repair for safety.

223 BOARD EXHIBIT 18

6/14/37

List of 84 Cards Which are Dated Prior to September 10, 1936

Aigner, Jos	8/5 /36	
Anderson, Andy M	7/21/36	
Ark, Steve	7/21/36	
Bereczky, Andrew	7/13/36	Meyer Adelman
Bereczky, Louis	8/14/36	
Benkovich, Nick	7/21/36	
Brown, Roy	7/18/36	
Brunke, Edward	7/13/36	Meyer Adelman
Canelakes, Gus	8/ 4/36	
Camernik, Jerome, Jr	7/13/36	Meyer Adelman
Christiason, Ted	7/23/36	
Chudy, Jos	8/ 5/36	
Crump, Lester	7/13	Meyer Adelman
Crump, W. D	8/ 5/36	
Daluga, Leo P	7/18/36	
Devine, George W	9/ 4/36	
Dreyer, Harold	7/13/36	Meyer Adelman
DuBois, R. E	8/ 5/36	
Dugan, Cornelius	7/24/36	

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Fagan, Thos. E	7/13/36	Meyer Adelman
Fellens, Frances	8/21/36	
Fulkerson, Chas	7/18/36	
Galbavy, Angelo	7/14/36	Meyer Adelman
Germes, John	7/21/36	
Graimer, Phil	8/ 3/36	
Gramer, Evelyn	8/21/36	
Grom, John	7/19/36	John Kondrath
Grossenheider, Raymond F	8/ 5/36	
Grum, Stanley	7/13/36	Meyer Adelman
Haney, Gilberg	7/2/3/36	
Henning, Albert	9/ 4/36	
Hensley, Fred	7/13/36	
Hoff, Joseph	8/21/36	
Holm, A., Jr	8/ 4/36	C. Swanson
Hook, Chester	7/23/36	
Huffman, Ralph	11/13/36	John Germer
Jakolat, Albert	7/14/36	Meyer Adelman
Janas, Stanley	7/23/36	
Johnson, Oscar (per J. K	7/21/36	
Johnson, Eino	9/ 4/36	

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Johnstone, Alfred	8/21/36	
Jorski, Catherine*	7/23/36	Clarence Dreyer
Kancilja, Tony	8/ 4/36	
Karpinski, Fred	7/23/36	
Kaucic, Edward	7/18/36	
Kondrath, John	7/13/36	Meyer Adelman
Latz, Frank	8/21/36	
Leskovec, Jasper	7/18/36	
Lodesky, Frank (Died in Sept.)	7/14/36	Meyer Adelman
Ludlow, F	9/ 4/36	
Mesec, Fred	7/18/36	
Moxey, Frank	8/10/36	
Musech, Frank	7/18/36	

Nagode, Anton	7/13/36	Meyer Adelman
Nickoley, Frank	7/13/36	Meyer Adelman
Pearce, Olive	9/10/36	
Pester, Russell	9/ 4/36	
Petkus, C	8/ 5/36	
Plewa, John	7/23/36	
Praski, John	7/13/36	
Pratt, Robert	7/24/36	
226		
Rehmar, Elmer	7/21/36	
Rickveis, Joeph	8/ 5/36	
Rayner, Harry H		
Rode, Andrew	7/18/36	
Ross, R. R	9/ 4/36	
Ruck, E	7/21/36	
Seifert, Marguerite	8/21/36	
Schultz, Eric	7/28/36	
Schuman, Edward	7/13/36	Meyer Adelman
Skarbalis, Peter	8/ 8/36	
Sladek, Milton*	11/20/36	F. Latz
Slobe, Victor	7/19/36	
Small, Luther	7/13/36	Meyer Adelman
Smith, Geo. W	7/31/36	
Sterovich, John	7/13	Meyer Adelman
Swanson, C. A	7/14/36	Meyer Adelman
Turpic, Tony	7/21/36	
Van Treeck, Wm	8/ 5/36	
Warner, Chas	7/13/36	Meyer Adelman
Wells, Paul	7/ 4/36	
White, Allen	8/ 5/36	
227		
Yaeger, Fred	7/14/36	Meyer Adelman
Zelenick, Frank	8/ 5/36	
Zelenik, Mike	8/ 5/36	John Kondrath

*(Marked "Exempt")

BOARD EXHIBIT 19

226

6/14/37

List of 18 Cards, no one of which Bears a Date as to when Persons Whose Names Appear Applied for Membership

X Bond, H	July	1936	Meyer Adelman
R Bunton, A. J	July,	1936	Meyer Adelman
Carlseen, Mabel	Aug 21	1936	
R Dreyer, Clarence	July,	1936	
X Herman, Alma*	November	1936	Wm. Magness
X Herman, Elsie*	November	1936	Clarence Dreyer
X Jorski, Lydia*	November	1936	Phil Graimer
X Lindberg, Eric (Eric)	February	1937	Fagan
R Magness, William B	July 6	1936	Meyer Adelman
X Worklan, Mary	November	1936	Harold Dreyer
X Nostel, David	November	1936	Carl Swanson
R Ohlson, Theodore	August	1936	
X Oliver, Victor	February	1937	Fagan
R Petraitis, Joseph	July	1936	Meyer Adelman
R Pomppaine, Arvo	Aug	1936	
R Pratt, Merritt	August	1936	
X Salo, Laverne	January,	1937	R. E. DuBois
X Swanson, Orlin	Feb.	1937	Fagan

*(marked "Exempt")

X Dates from Union Records—W. R. Walsh

R Date from Testimony in the Record—W. R. Walsh

BOARD EXHIBIT 20
229 6/14/37

List of Cards, all of which are Dated Subsequent to Month of September. Most of These Dated Prior to February 17

Name	Date	Organizer
Ambrose, Charlie	11/13/36	Frank Zelenick
Anthony, Frank	12/18/36	Frank Latz
Bissonnette, Joan*	11/16/36	Harold Dryer
Boren, Thom	11/ 8/36	Adelman
Bourdeau, Wallace	12/31/36	
Braden, W. R	11/13/36	M. Crump
Brandt, Harry*	11/18/36	F. Latz
Bristol, Laurence	11/13/36	Frank Zelenick
Butterfield, Virginia	11/27/36	Harold Dreyer
Cerk, George	11/ 8/36	Adelman
Coon, Milton	2/17/36	F. Latz
Cuelith, John	12/10/36	Fagan
Dietmeyer, Vincent	11/11/36	Carl Swanson
Fisher, LeRoy*	11/17/36	Frank Zelenick
Fuilan, Frank*	11/13/36	F. Latz
Fulkerson, Chas. E	1/ 9/37	Fagan
Gartley, Fern	1/ 8/37	Fagan
Hanson, Gilbert	1/ 6/37	Frank Zelenik
Hendee, Eugene D	11/10/36	Carl Swanson
Herman, Henry*	11/13/36	F. Latz
Hertel, Victor	12/18/36	Fagan
230 Exhibit 20		
Janas, Chester	12/28/36	Fagan
Jackaway, John W	12/26/36	Fagan
Johnson, Vivienne	11/27/36	Ed. Schuman
Jorski, Clara	12/ 3	Adelman
Kallio, George	2/ 3/37	
Laser, Miss Mary	11/25/36	Ed. Schuman
Latz, Herman*	11/17/36	F. Latz
Latz, Otto	11/ 2/36	Adelman
Lima, Joe*	11/13/36	F. Latz
Luczo, Elizabeth	3/ 3/37	J. A. Kondrath
Luczo, Steve	11/11/36	Angelo Galbavy
Luke, Elmer	12/16/36	Harold Dreyer
Luke, Gus E	1/ 4/36	F. Latz
Markovec, Paul	2/21/37	O. H. Mills
Merkins, Otto H	12/ 8/36	Adelman
Mesec, Tillie*	11/13/36	Ed. Schuman
Mogel, Nate	? 15/36	F. Latz
Mondro, George	11/12/36	F. Latz
Nimsgern, Robert	11/12/36	F. Zelenick
Novak, Nick	11/13/36	John Germer
231 Exhibit 20		
Ocenak, Frank	12/31/36	Frank Latz
Pearson, Ray	1/11/37	O. H. Mills
Peters, Elsworth	12/22/36	F. Yager
Peters, Hazel L	1/22/37	F. E. Fagan
Ponterick, Bartol	1/27/37	Fagan
Ptak, Frank	11/17/36	Roy Brown
Recktenwald, Isabel	11/25/36	Ed. Schuman

Romppaine	11/12/36	F. Latz
Sand, Louise	12/22/36	Harold Dreyer
Scheuer	2/ 6/37	Fagan
Schneider, Henry	11/12/36	F. Latz
Simonson, Alf	12/10/36	Kondrat
Sladek, Arthur*	11/18/36	F. Latz
Stanley, L. O	12/17/36	
Smith, C	1/30/37	Fagan
Taylor, John	3/11/37	Harry Rayner
Verenski, Stanley	11/11/36	Adelman
Westerlund, Oscar	11/13/36	John Germer
Weatherhead, V. L	2/17/36	F. Latz
Micklich, Elsie*	11/11/36	Ed. Schuman

*(marked "Exempt")

232 BOARD EXHIBIT NO. 21.

6/14/37.

April 20, 1937

National Metal Trades Association
122 South Michigan Avenue
Chicago, Illinois.

Gentlemen:

I think that the occasion for addressing communications to me at my home, 595 Lincoln Avenue, Glencoe, Illinois has passed and I suggest that you change your records or mailings so that all material from the association will now come addressed to me at North Chicago, either in care of Fansteel Metallurgical Corporation or Vascoloy-Ramet Corporation, as the case may be. This will be more convenient for us and will get the material in the hands of our people much more quickly than is possible under the present mailing arrangement.

Yours very truly
Fansteel Metallurgical Corporation
President

R J Aitchison
NL
cc-Messrs. H. S. Flyn
Chas Blatchford

233 BOARD EXHIBIT NO. 22.

6/14/37.

April 22, 1937

Mr. Chas. H. Strawbridge, President
National Metal Trades Association
122 South Michigan Avenue
Chicago, Illinois.

Dear Mr. Strawbridge:

Following my return to the city after an absence of two weeks, I am pleased to acknowledge your letter of April 7. We are very happy about our acceptance as members in your Association and I just want to write you and tell you we hope we will prove constructive, helpful members in advancing the excellent principle for which your association stands.

I want to take this opportunity also for expressing to you our sincere appreciation of the many helps and assistances accorded us through the Executive Office of your association and through the head of your Chicago Branch.

Yours very truly
Fansteel Metallurgical Corporation

R J Aitchison *President*
NL

234 BOARD EXHIBIT NO. 23.

6/11/37.

Application for Membership

National Metal Trade Association

A check for $50.00 to cover the Initiation Fee is required with this application, with the understanding that same is to be returned to the applicant if not elected. Kindly make check payable to the Treasurer of the Association.

"Members of this Association shall be persons, firms or corporations, engaged as principals owning or controlling manufacturing plants, operating principally in the metal trades, or in trades employing metal workers as hereinafter classified." (Art. 2, Sec. 1, Constitution adopted January 18, 1909.)

National Metal Trades Association
Chicago, Ill.

235 **Application for Membership.**

We, the undersigned, do hereby covenant and agree to, and with each and every member of the National Metal Trades Association, as follows:

"Fair dealing being a cardinal principle of this Association, we pledge ourselves to be governed by and to obey its Constitution and By-Laws and all proper rules in conformity therewith which do not conflict with the Laws of the County, State or Province in which we do business.

"It is agreed that this application shall not become operative until it shall have been accepted and approved by the Administrative Council, and until the initial assessment shall have been paid."

If, without the consent of the Administrative Council, a member shall settle a difference or strike, the defense of which has been assumed by the Association, such member shall repay to the Association all the moneys which the Association may have expended on account of having assumed defense of such difference or strike, and shall also be liable to suspension or expulsion. (Section 7, Article 13, Constitution.)

Applicant's Firm Name Fansteel Metallurgical Corporation
By Robert J. Aitchison.
(Official Signature of Responsibie Officer)

Date Aug. 17, 1936.

Note—Because of the confidential nature of the Association's correspondence it is desirable that all mail sent from the Commissioner's Office be addressed to some particular individual.

Statement of Conditions.

1. General character of business Prod. and Fabric. of Rare Metals.
2. Have you ever applied for or held membership in the National Metal Trades Association? No.
3. Are you a member of any other association of employers? No.
4. Date and character of last labor demand made upon your company None.
5. Have you any labor agreements with employees who come under the classification of this Association? No.

6. If so, please forward copies.....

7. Are any of your employees involved in any labor troubles at present? No.

8. If so, give full details.....

9. With what labor organization are your employees affiliated? None known.

10. Is any labor difficulty pending in your establishment? None known.

11. If so, give full details.....

Do you have a works council or an employee representative plan? No.

If so, please submit a copy.

12. In your opinion, in case of strike, will other trades in your employ strike in sympathy? No.

13. *No. of hours plant is operated each day (Day shift 8 hrs (Night shift ....

No. of hours plant is operated per week (Day shift 40 hrs (Night shift ....

Night shift only in certain departments.

No. of hours plant is operated on Saturday (Day shift ((Night shift ....

236 Employees.

Please Read Note on Last Page Before Filling Out This Application.

Classification	Maximum Number Men	Women
Machine Shop		
All-Round Machinists	9	....
Bench and Vise Hands	....	....
Assemblers	....	....
Erectors	....	....
Scraper Hands	....	....
Lathe Hands	1	....
Boring Mill Hands	....	....
Milling Machine Hands	....	....
Planer Hands	....	....
Shaper Hands	1	....
Slotter Hands	....	....

* Above figures should be based on the normal daily or weekly schedu and for which straight (single) time is paid.

Classification	Maximum Number Men	Women
Key Seater Hands	.....	.....
Drill-Press Hands	1	.....
Turret-Lathe Hands	.....	.....
Screw Machine Hands	2	.....
Gear Cutter Hands	.....	.....
Machine Grinder Hands	.....	.....
Tool Makers	.....	.....
Die Makers	1	.....
Die Sinkers	.....	.....
Apprentice	4	.....
Heading Mach. Oper.	2	.....
Forge Shop and Heat Treating Department		
Blacksmiths	.....	.....
Drop Forgers	.....	.....
Steam Hammer Men	.....	.....
Hardeners and Annealers	17	.....
Elec. Furn. Chem. Proc.	6	.....
Boiler Shop, Shipyard & Struct. Iron Workers		
All-Round Boilermakers	.....	.....
Layers Out	.....	.....
Punch and Shear Hands	.....	.....
Riveters	.....	.....
Caulkers	.....	.....
Holders on	.....	.....
.....	.....	.....
Pattern Shop		
Wood Patternmakers	.....	.....
Metal Patternmakers	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	44	.....
General Manufacturing		
Power Press Hands	2	.....
Misc. Machine Operators	17	.....
Metal Parts Assemblers	2	11
Sheet Metal Workers	.....	.....
Coppersmiths	.....	.....

Classification	Maximum Number Men	Women
Silversmiths	.....	—
Spinners	.....	—
Welders	.....	—
Solderers	.....	—
Braziers	2	—
Polishers Diam. Dies	2	1
Buffers	.....	—
Platers	2	—
Burnishers	.....	—
Pickle Tub Men	.....	—
Tinners and Galvanizers	.....	—
Inspectors	1	18
Testers	.....	—
Machinery Painters	.....	—
Handymen and Helpers	.....	—
Apprentices	.....	—
Misc. Production Labor	1	—
Misc. Production Labor Chem. Proc.	7	—
Rolling and Wire Mills		
Metal Rollers	4	—
Bull Block Men	3	—
Wire Drawers	4	1
Swagers	6	—
Annealers	4	—
Automotive Assemblers		
Motor	.....	—
Chassis	.....	—
Real Axle	.....	—
Riveters	.....	—
Miscellaneous	.....	—
.....	.....	—
Maintenance		
Carpenters	3	—
Millwrights	2	—
Pipe Fitters	2	—
Electrical Workers	1	—
Elec. Furn. Repr.	2	—
Helpers	1	—
.....	.....	—
.....	.....	—
.....	.....	—
.....	68	31

237 Seconded by

Date ....., 193.....

Applicant's Fire Name Fansteel Metallurgical Corp.

Name of Individual Robert J. Aitchison

(See Note on page 2)

Street Address 595 Lincoln Avenue

City Glencoe State Ill.

Note.

In filling out this application it should be remembered that foundry employees, truck drivers, yard men, engineers, firemen, watchmen, crane men, elevator operators, stock keepers, packing-room employees, janitors, clerks, draftsmen, superintendents, general foremen, foremen, and all non-productive labor should Not be included; neither should operatives employed outside the premises of the plant be included in this report. The Administrative Council has ruled that where a plant includes a department employing structural iron workers, factory carpenters, millwrights or pipe fitters, which is virtually a unit separate from the machine shop, and where such men come properly under the jurisdiction of some other trade association of employers, such men shall not be reported; but where such men are employed merely as auxiliary to the manufacture of metal goods, they are subject to assessment. The object of the ruling is to exclude the distinctively building trades.

238 BOARD EXHIBIT NO. 24.

6/14/37.

Organized 1899

National Metal Trades Association

Homer D. Sayre, Commissioner Harry S. Flynn, Secretary

March 31, 1937

Mr. Robert J. Aitchison
Fansteel Metallurgical Corporation
North Chicago, Illinois

Dear Mr. Aitchison:

I have the honor and pleasure of advising you of the favorable action of the Executive Committee upon your application for membership in the National Metal Trades Association. It is quite important that you should fully advise yourself of the By-Laws governing the conduct of the affairs of the Association, and to that end we enclose a copy of our Constitution and By-Laws.

Your particular attention is called to Article XII and to Sections 1, 2 and 3 of Article XIII, which for convenient reference are separately printed and also enclosed. In interpreting Section 2 of Article XIII, the Council has fixed the "date of official enrollment" to be the date when the new member pays the first assessment as based upon the report of operatives, and the ninety day period to run from that date. In the event of a strike occurring during the ninety day period and continuing beyond that time, the defense of such a strike is entirely within the discretion of the Administrative Council. In fact, the defense of any strike by the Association must always be sanctioned by the Council, and you are, therefore, requested to fully advise yourself by reference to the By-Laws as to procedure in case of threatened trouble or actual strike.

Bill covering your assessment for the unexpired portion of the present quarter (April 1st to May 31st) is enclosed. Ninety days after the receipt of check covering this bill (through the Secretary of the Chicago Branch) you will be entered on our records as a fully qualified member, and a certificate of membership will be sent to you.

In welcoming you to the ranks of our members we feel sure

that your connection with the Association will be of great benefit to you both directly and indirectly and your hearty cooperation with the objects of the Association will add to its strength to as great an extent as your financial support.

Very truly yours,

(Sgd) H. D. Sayre

HDS:MG *Commissioner.*

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Extract From the

Constitution and By-Laws

of the

National Metal Trades Association

Article XII.

Benefits of Membership

Members in Arrears Not Entitled to Benefits

Section 1. No member in arrears to the Association for thirty days shall participate in the benefits of membership except by special action of the Administrative Council.

New Member Not Entitled to Benefits for Ninety Days

Sec. 2. No member shall be entitled to the benefits of membership until ninety days after date of official enrollment; but, if labor trouble is threatened or declared against such member before enrollment, the Administrative Council at its discretion may direct the Commissioner to take measures to prevent or combat a strike. In such event the member shall agree in writing to pay all expenses incurred by the Association in his behalf.

Article XIII.

Strikes and Lockouts

How to Proceed in Case of Labor Disputes

Section 1. In the conduct of labor disputes members must proceed in the manner which the Constitution and By-Laws prescribe, failing in which they shall forfeit all right to the financial or moral support of the Association, except as special relief measures may be authorized by the Administrative Council.

Defense of Strikes to Be Handled by Administrative Council

Sec. 2. The defense of a strike or lockout which has been authorized by the Administrative Council shall be conducted only under its direction or that of its authorized representative.

Methods of Relief and Protection

Sec. 3. In the case of a strike in the shop of a member, the Association may, upon request of the member, assist in procuring workers to replace the strikers; but the number of workers so procured shall not exceed seven-tenths of the number of striking employes covered by the member's regular assessment for the current quarter. Nor shall such member be entitled to any additional relief because of any penalty which may have been invoked under Section 7, Article VII. Other methods may be adopted by the Administrative Council for the relief of members in times of strikes or lockouts.

240 BOARD EXHIBIT NO. 25.

6/15/37.

The employees of Fansteel Metallurgical Corporation of North Chicago, the majority of the employees being duly organized and being members of the Amalgamated Association of Iron, Steel and Tin Workers of North America, hereby duly elected and authorized the following members of our own Lodge, Number 66, A.A.I.S.T.W.N.A., Carl Swanson, Frank Latz, and Harold Dryer to present to the management of the above named corporation and to ask the said corporation for a conference, with the above named committee, for the purpose of arranging a meeting or meetings, at which time and place the question of collective bargaining and recognition of the Steel Workers Organizing Committee as the sole bargaining agency shall be taken up and discussed with the above named management.

Respectfully submitted,
Lodge 66, A. A. I. S. T. W. N. A.
John A. Kondrath,
President.

(Seal)

Carl Swanson,
Secretary.

March 3, 1937.

241 BOARD EXHIBIT NO. 25A.

6/21/37.

The employees of Fansteel Metallurgical Corporation of North Chicago, the majority of the employees being duly organized and being members of the Amalgamated Association of Iron Steel and Tin Workers of North America, hereby duly elected and authorized the following members of our own Lodge, Number 66, A.A.I.S.T.W.N.A., Carl Swanson, Frank Latz, and Harold Dryer to present to the management of the above named corporation and to ask the said corporation for a conference, with the above named committee, for the purpose of arranging a meeting or meetings, at which time and place the question of collective bargaining and recognition of the Steel Workers Organizing Committee as the sole bargaining agency shall be taken up and discussed with the above named management.

Respectfully submitted,
Lodge 66, A.A.I.S.T.W.N.A.
(Signed) John A. Kondrath
President
(Signed) Carl Swanson
Secretary

March 3, 1937.

242 BOARD EXHIBIT NO. 26.

6/15/37.

(Letterhead of Fansteel Metallurgical Corporation, North Chicago, Ill.)

March 3, 1937

To: Messrs. Carl Swanson
Frank Latz
Harold Dreyer

Dear Sirs:

This afternoon you called in person and presented to us a memorandum requesting that we meet with you as a committee to discuss the question of collective bargaining and the recognition of the Steel Workers Organizing Committee as the sole bargaining agency for the employees of our company.

As you well know, our business is not related, directly or otherwise, to the steel business, or to the iron business, or to the tin business. We, therefore, adhered to our consistent refusal to recognize the Steel Workers Organizing Committee as the bargaining agency for our employees and we so advised you immediately.

In connection with this matter, moreover, we desire to call your attention to the following considerations which are uppermost in our minds:

(1) The bona fide membership of your Steel Workers Union Local has actually never embraced more than a small minority of our employees. Any additional signatures were procured by you only through a systematic campaign of coercion, intimidation, threats and duress, extending even into the very homes of our employees and their family circles;

(2) The vast majority of our employees refused to participate in the sit-down strike and since the enforcement of the court's orders many who involuntarily, or otherwise, remained in the plant, have advised us of their dissatis-
243 faction and disassociation with the Steel Workers Organizing Committee and its local union unit and the lawlessness and violence which characterized their activity;

(3) Our company is in no part connected with the iron, steel or tin industries, nor are our products used by such industries. Ours is a highly specialized laboratory controlled operation which has nothing in common with any mass production industry. We must also make it perfectly clear that under no circumstance can we condone the violent seizure of our plant, the defiance of the judicial decrees and the resistance by force to the law enforcement officers of the community, instigated and directed by the Steel Workers Organizing Committee and its local steel workers unit. Nor can we permit the continuation of the coercive and intimidating tactics used against our employees during the past several months and renewed recently in direct violation of the court's injunction. With this background, and in fairness to our employees who have rejected the lawless practices of the groups mentioned, and who resent the coercive tactics employed, we can not give recognition to the Steel Workers Organizing Committee as the bargaining agency in their behalf.

(4) Immediately following the violent seizure of our plant, we announced the discharge of you and the others who participated in such action with you. We are giving favorable consideration to the applications for reemployment filed by

a number of these men. Except to the extent of any such re-employment, we must consider all of those who were thus discharged as remaining in the category of ex-employees.
244 (5) We have always been willing to meet with our employees, either singly or collectively, to discuss any matter arising out of our employee relationships and we will adhere to this consistent policy.

Yours truly,
R. J. Aitchison
President of
Fansteel Metallurgical Corporation

245 BOARD EXHIBIT NO. 26-A.

6/21/37

To: The Management,
Fansteel Metallurgical Corporation.

Dear Sirs:

The committee of the employees of the Fansteel Metallurgical Corporation, elected to negotiate with the management on behalf of the members of Amalgamated Association Lodge 66, are desirous of bringing about peace and the settlement of the strike now in progress. Therefore we are again asking the management to recognize our union which we have chosen for the purpose of collective bargaining for our members. We are asking that a conference be held between the company and the union for the purpose of adjudicating the dispute.

Respectfully submitted,
Lodge 66, A.A.ISTWNA
(Signed) Frank Latz
(Signed) Carl Swanson,
Chairman L. Comm.
(Signed) Harold Dreyer
(Signed) Paul P. Glaser,
Atty for Lodge 66.

246 **BOARD EXHIBIT NO. 27.**

6/15/37

Stenographic Report of Conference Held at Fansteel Metallurgical Corporation, North Chicago, Illinois, in Conference Room, March 5, 1937 at 11:45 A. M.

Reported by: Nona Long

Present:

Carl Swanson
Harold Dreyer
Frank Latz
R. J. Aitchison
F. H. Driggs
A. J. Anselm

Carl Swanson: We would like to present this matter for your attention.

(Swanson presents paper to R. J. Aitchison. Paper read by R. J. Aitchison, F. H. Driggs and A. J. Anselm.)

R. J. Aitchison: Well, is it alright to answer you in writing like we did the last time?

Carl Swanson: Your question was that you would like to answer in writing again?

R. J. Aitchison: As we did before.

Carl Swanson: Could we have the answer to-day?

R. J. Aitchison: No, we couldn't possibly give it to you today. We would want to think about it and give you a carefully prepared answer.

Carl Swanson: You wouldn't wish to discuss this matter now any further?

R. J. Aitchison: You started this with the request that we answer your communications in writing and I would like to continue it.

Harold Dreyer: (To Swanson). Well, it seems as though we should be able to come to some kind of a definite agreement here. Don't you think so?

R. J. Aitchison: You started this procedure of writing and I think we should follow it.

Carl Swanson: Well, if that is the management's wish that they continue it and do not wish to discuss it any further, we will accept that.

Carl Swanson: May I have a copy of that? (Meaning stenographic report).

R. J. Aitchison: Alright, we will send you a copy of it.

247 BOARD EXHIBIT NO. 28.

6/15/37

(Letterhead of Fansteel Metallurgical Corporation, North Chicago, Ill.)

March 8, 1937

To: Messrs. Carl Swanson
Frank Latz
Harold Dreyer

Dear Sirs:

The request contained in the memorandum you submitted March 5, 1937, is little different from the one presented on March 3rd. The only material change is that instead of the Steel Workers Organizing Committee you now propose that one of its local units be accepted as the bargaining agency for our employees. That substitution fails to meet the controlling considerations outlined in our letter to you of March 3rd last.

A careful inquiry by the management has revealed no employees of the company who have authorized you to speak on their behalf. In addition, we think it appropriate to call your attention to the fact that all three of you were discharged for your participation in the violent seizure of our plant and remain in the category of discharged employees. For our further views, we again refer you to our letter of March 3rd.

Very truly yours,
R. J. Aitchison,
President of Fansteel Metallurgical Corporation.

Copy of stenographic notes enclosed.

248 BOARD EXHIBIT NO. 29.

6/15/37

J. T. Heis
C. A. Swanson
W. D. Crump
Charles T. Warner

March 18, 1937.

Fansteel Metallurgical Corporation,
North Chicago, Illinois.
Attention of Mr. R. J. Aitchison,

Dear Sir:

A Properly authorized group of members of Local #66 of the Amalgamated Association of Iron, Steele and Tin Workers of North America, have requested me, in the best interest of all concerned, to present the following requests to you, for your consideration.

No. 1 The recognition of Lodge No. 66 Amalgamated Association of Iron, Steele and Tin Workers of North America, as the bargaining agency, for its members.

No. 2 That no discrimination be shown to any member of the above mentioned Organization, who has participated in any way, in the dispute between the above mentioned Organization, and the Fansteel Corporation.

No. 3 That the Fansteel Corporation select a Committee of its Own choosing, to meet with a Committee selected by Local No. 66 Amalgamated Association of Iron, Steele and Tin Workers of North America, of its members who have been employed by the Fansteel Corporation to discuss and arbitrate mutual differences.

If a favorable answer is received to the above requests by 5 P. M. Monday March 22nd, 1937, or at any time prior to that time, Local No. 66 Amalgamated Association of Iron, Steele and Tin Workers of North America, agree to remove all pickets from the vicinity of the Fansteel Corporation, providing that during the period of negotiation, the Fansteel Corporation agrees not to hire any new employees for any purpose whatever.

My office in this matter is that of mediator, whose desire is to bring together the two parties concerned in this dispute,

so that no undue hardship shall be worked upon either of the parties concerned, or the State and Nation.

Respectfully yours,
John F. Harris,
Supt.

State of Illinois }
County of Lake } ss.

I, Florence Efinger, Notary Public in and for Lake County, Illinois, hereby certify the foregoing to be a true and perfect carbon copy of an original letter signed by John F. Harris, Sup't Lake County Veterans Relief Commission, dated March 18, 1937 and addressed to Fansteel Metallurgical Corporation, North Chicago, Illinois, attention Mr. R. J. Aitchison.

In Witness Whereof, I hereunto set my hand and Notarial Seal at Waukegan, Illinois this 18th day of March 1937.

Florence Efinger,
(Seal) *Notary Public.*

249 BOARD EXHIBIT NO. 30.

6/16/37

National Metal Trades
Association

Constitution
By-Laws
Declaration of Principles

Peoples Gas Building
Chicago, Ill.
July, 1925

251 Constitution

Article I.

Name and Objects

Name

Section 1. The name of this Association shall be the National Metal Trades Association.

Objects

Sec. 2. The objects of this Association are:

(1) To secure and preserve equitable conditions in the workshops of members for the protection of both employer and employe.

(2) Investigation and adjustment of questions arising between members and their employes which may come within the jurisdiction of the Association.

Article II.

Qualification and Obligation of Members

Eligibility to membership

Section 1. Members of this Association shall be persons, firms, or corporations, engaged as principals owning or controlling manufacturing plants, operating principally in the metal trades, or in trades employing metal workers as hereinafter classified.

252 Obligations of Members

Sec. 2. Members of this Association shall execute the following agreement:

"We, the undersigned, hereby covenant and agree with each other and with every other member of the National Metal Trades Association, as follows:

"Fair dealing being a cardinal principle of this Association, we pledge ourselves to be governed by and to obey its Constitution and By-Laws and all rules in conformity therewith which do not conflict with the laws of the country, state or province in which we do business."

Article III.

Government

Officers

Section 1. The officers of this Association shall be a President, a First Vice President, a Second Vice President, and a Treasurer, who shall be elected by the members annually by ballot at the Annual Convention of the Association. A majority of the votes cast shall be necessary to a choice.

Tenure of office

Sec. 2. Officers of this Association shall hold office until their successors shall have been elected and shall have qualified.

Administrative Council

Sec. 3. This Association shall be managed by an Administrative Council consisting of the President, First Vice
253 President, Second Vice President, Treasurer, and twelve others, members of the Association, elected as hereinafter provided for.

Powers of Administrative Council

Sec. 4. The Administrative Council shall be vested with full power to interpret the Constitution and to put into effect the laws, resolutions, and decisions of the Association, and, by a two-thirds vote of all its members, to make or change by-laws for its own government which shall not conflict with this Constitution; to appoint standing and special committees; to fill vacancies which may occur in the offices, in the committees, and in its own body (for unexpired terms); to exercise general supervision over receipts and expenditures; to levy assessments, as hereinafter provided for; to appoint a salaried Commissioner for a term of not to exceed three years, and to prescribe his duties; to appoint a Secretary and other employes and agents of the Association and to define their duties; to define the duties of the officers of the Association, other than as defined in the Constitution; to fix the compensation of employes and agents of the Association; and to do all other acts and things which it may deem to be for the interest of the Association, not in conflict with its Constitution.

254 Meetings of Administrative Council

Sec. 5. The Administrative Council shall hold two regular meetings in each year, one of which shall be called by the

President at least one day before the Annual Convention, and the other during the month of October. Special meetings of the Administrative Council shall be held at the call of the President, or at the written request of three of its members.

Executive Committee

Sec. 6. The President shall appoint from the Administrative Council three of its members, who, with the President, shall constitute an Executive Committee, which shall meet monthly at the call of the President, and shall have such powers as may be delegated to it by the Administrative Council.

Compensation to Members of Committees

Sec. 7. Each member shall be allowed ten dollars ($10.00) per diem and expenses when serving at regular or special meetings of the Administrative Council or at meetings of its committees.

Letter Ballots

Sec. 8. The Administrative Council shall have power to call for letter ballots from members of the Association, and such ballots shall be of the same force as the vote of a Convention.

255 Who Eligible to Serve on Administrative Council

Sec. 9. Any duly accredited representative who shall also be a partner, owner or any corporate or administrative officer of any member in good standing is eligible to serve on the Administrative Council. A firm or corporation, regardless of the number or location of plants which it owns or controls, may not have more than one representative upon the Administrative Council.

When Councilors Shall Forfeit Office

Sec. 10. A member of the Administrative Council who shall be absent from two consecutive meetings thereof, regular or special, shall forfeit his office, unless excused by a majority vote of the other members of the Administrative Council.

Quorum at Council Meetings

Sec. 11. A majority of the Administrative Council shall constitute a quorum thereof.

Article IV.

Conventions

Annual Convention

Section 1. The Annual Convention of the Association shall be held in April of each year, at such time and place as the Administrative Council shall appoint.

Special Conventions

Sec. 2. Special Conventions shall be called by the President, at the written request of three-quarters of the Administrative Council, or at the written request of one-quarter of the members of the Association.

256 Conventions of Whom Composed

Sec. 3. Conventions shall be composed of duly accredited representatives of members in good standing, as defined in Section 9, Article III. Members may be represented by proxies held by members.

Quorum

Sec. 4. One-fifth of the vote of the Association shall constitute a quorum at Conventions.

Work of Conventions

Sec. 5. Conventions shall make such laws, define such policies, adopt such resolutions, and render such decisions, as shall further the interests of the Association; and the acts, resolutions, and decisions of a Convention shall be binding upon all members of the Association.

Voting Power of Members

Sec. 6. Each member shall be entitled to one vote for every operative; but no member shall cast more than five hundred votes, including proxies.

Nominating Committee

Sec. 7. At Annual Conventions a nominating committee of three members, preferably the last three Ex-Presidents of the Association, shall be appointed by the President.

Duty of Nominating Committee

Sec. 8. It shall be the duty of the Nominating Committee, during the year succeeding its appointment, to select candidates for the offices of President, First Vice President, Second Vice President, and Treasurer, and also to select candi-

dates for Councilors, to serve as herein provided. The Nominating Committee shall place the names of candidates
257 recommended by it on a ballot, to be presented at the next Annual Convention. This ballot shall be mailed to each member thirty days prior to the Convention.

Additional tickets, if recommended in each case by not less than fifty members, may be presented to the Convention; but such ticket or tickets must be in the hands of the Secretary not less than fifteen days prior to the Convention. Ballots shall then be printed and promptly transmitted to all the members by the Secretary, in the same manner as the ticket of the Nominating Committee.

Councilors' Term of Office

Sec. 9. Each member of the Administrative Council shall be selected for a term of two years, except that, in order to bring the membership of the Administrative Council up to the proper number as provided for in this Constitution, the Annual Convention of 1909 shall elect two Councilors to serve a term of one year and six Councilors to serve terms of two years.

President to Preside. When He Votes

Sec. 10. The President of the Association shall preside at Conventions and at meetings of the Administrative Council. He shall have no vote except in case of a tie.

Article V.

Districts

Administrative Council to Create Districts

Section 1. For the purpose of providing for concerted local action, members in adjacent territory shall be grouped by the Administrative Council into districts.

258 May Elect District Officers

Sec. 2. Each District may, in March of each year, elect a Chairman, Vice-Chairman, and Secretary, to serve as an Advisory Committee, convenable at the discretion of the Administrative Council.

Or Administrative Council May Appoint

Sec. 3. If a District fails to elect its officers, they may be appointed by the Administrative Council.

Members Operating More Than One Plant

Sec. 4. Plants owned or controlled by the same firms or corporations in different districts shall be considered separately in the respective districts.

Article VI.

Local Branches

Conditions under which Local Branches may be Formed

Section 1. The Administrative Council may, in its discretion, authorize the formation of local branches; and fix the boundaries of the territory over which such local branches shall have jurisdiction. Provided, however, that each local branch shall comprise not less than ten members, employing an aggregate of not less than 1,500 reportable operatives; and provided also that each local branch shall adopt a Constitution and By-Laws in harmony with the Constitution and By-Laws of the National Association. (As amended 10-1-20.)

Local Branch to Maintain Employment Bureau

Rebates of One-Half Regular Dues to Local Branch

Sec. 2. A Local Branch shall maintain an efficient organization and an Employment Department, subject to the
259 approval of the Administrative Council. The Secretary of such Branch and its Employment Department in National matters shall be under control of the National Officers and shall co-operate with them; but, in local matters, they shall be under the control of the Officers of the Branch. If these conditions are complied with (and in that event only) the Association shall rebate to the Local Branch one-half of the regular dues paid by each member to the Association. But, if a Local Branch be not so conducted, the President of the Association shall notify the Treasurer of the Association to withhold such rebates from said Local Branch until the Administrative Council shall have passed on the subject.

Final decision as to what are local and what National matters shall rest with the Administrative Council.

Branch to be Dissolved by Vote of Administrative Council

Sec. 3. If the membership of a Local Branch shall fall below ten members, or if a Local Branch shall report less than fifteen hundred operatives, or if the ordinary revenues

of a Local Branch shall become insufficient to meet its current expenses, or if a Local Branch shall fail in loyalty to the Association, such Local Branch may be dissolved by the affirmative vote of not less than four-fifths of the members of the Administrative Council. But such Local Branch shall be duly notified of its failure to meet these provisions, and shall be given a reasonable opportunity to show cause why it should not be dissolved.

260 Article VII.

Revenue

Fiscal Year

Section 1. The fiscal year of this Association shall begin March 1st, and shall be divided into quarters beginning March 1st, June 1st, September 1st, and December 1st, respectively.

Administrative Council to Determine Amount of Assessment

Sec. 2. The Administrative Council shall determine the assessment per operative to be levied for each quarter, based on the estimated expenses for such quarter, plus such additional sum as may be necessary for the maintenance of the Defense Fund as may be determined by the Administrative Council.

Quarterly Assessments

Sec. 3. The Administrative Council shall levy regular quarterly assessments, as the needs of the Association may require; but such assessments shall not at any time exceed the sum of twenty cents per operative per month; provided that in no case shall the quarterly assessment amount to less than $10.00 for any one plant.

Special Assessments

Sec. 4. The Administrative Council is empowered to levy special assessments at such times and for such purposes as the exigencies of the Association may require.

How Based

Sec. 5. Assessments shall be based upon the number of operatives employed by each member; provided, however, that no member shall be assessed on more than 6,250 operatives for any quarter.

261 Classification of Operatives

Sec. 6. The word "operative" is hereby defined to mean machinist, pipe-fitter, mill-wright, blacksmith, boilermaker, pattern maker, carpenter, structural iron worker, polisher and buffer, brassworker, iron-ship builder, sheet-iron worker, electrical worker, coppersmith, machine operator, and helpers' and apprentices to any of the above. Workmen in any kindred trades may likewise be so designated, at the discretion of the Administrative Council.

Reporting Operatives

Sec. 7. Each member shall transmit by mail to the Commissioner; or if a member of a Branch, to the Secretary of such Branch, before the tenth days of March, June, September and December, respectively, of each year, a report of the number of operatives employed by him. The basis of such report shall be the average of the maximum number of operatives employed in each month of the preceding quarter. Any member who fails to make such report shall be assessed according to his last quarterly report plus a penalty of ten per cent, and if the member continues to neglect returning his quarterly report, each successive assessment will be ten per cent more than the preceding assessment. Failure to report shall not relieve a member from obligation to do so when notified by the Treasurer to that effect.

262 Dues and Assessments When and where payable. Local Branches may levy Assessments for local purposes

Sec. 8. All dues and assessments of the Association shall be paid to the Treasurer at the head office of the Association on or before the tenth day of the second month of each quarter, as determined by the number of operatives reported for the previous quarter. Provided, however, that where a member has failed to make such report, his assessment shall be in accordance with Art. VII, Sec. 7, as amended. Local Branches may levy, for local purposes, such regular and special assessments as their Executive Committees may, respectively, determine to be necessary for the support of the Branches. (As amended 10-1-20.)

Local Executive Committee may Authorize National Treasurer to Collect Local Dues

If a Local Branch deems it necessary to levy a regular or special assessment for the support of the Branch, in addi-

tion to the rebate paid by the National; and if, to obviate the collection of two assessments, the Executive Committee of the Local Branch shall deem it expedient to have this regular or special assessment collected by the National Treasurer, a Resolution of the Executive Committee of such Branch to that effect shall be transmitted to the National Treasurer, who shall collect and remit such additional amount, together with one-half of the National dues to which such Branch may be entitled.

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Article VIII

Funds

How Funds Shall be Divided

Section 1. The funds of the Association shall be divided into a General Fund to be used for ordinary expenses, and a Defense Fund to be used for defense purposes.

Article IX

Application for Membership

When Applicant is not in Local Branch Territory

Section 1. When an applicant's plant is not within the territory of a Local Branch, application for membership shall be seconded by two members and shall then be forwarded to the Commissioner, who shall submit the application for recommendation, or otherwise, by letter ballot to all the members of the District in which the applicant's plant is located.

Members not Voting to be Recorded as Approving Application

Sec. 2. The non-receipt, within fifteen days, of a member's vote on an application for membership shall be treated as an affirmative vote.

When Applicant is in Local Branch Territory

Sec. 3. When an applicant's plant is within the territory of a Local Branch, the Secretary of the Branch shall submit the application to the members of the Branch, either by mail or at a Branch meeting; and, when approved by the Executive Committee of the Branch, the original application shall be transmitted to the Commissioner with a report to that effect.

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Article X

Election of New Members

Members, How Elected

Section 1. The Commissioner shall promptly transmit by letter, to the members of the Administrative Council all applications for membership. Elections shall be by majority vote of the members of the Administrative Council.

Article XI.

Resignations, Suspensions and Expulsions

Resignations, How Tendered

Section 1. Resignations of members shall be tendered through the Commissioner to the Administrative Council.

When Members may not Resign

Sec. 2. No member may resign from the Association during a strike nor pending the settlement of a difficulty existing within the jurisdiction of the resigning member's District or Branch without the approval of the Administrative Council.

Resignations When Member is in Arrears. Four Weeks notice

Sec. 3. No resignation shall be accepted so long as the resigning member is in arrears to the Association; and, in any case, four weeks notice in writing shall be given to the President or to the Commissioner.

How Members may be Suspended, Expelled, or Reinstated

Sec. 4. A member may be suspended or expelled for cause by a three-fourths vote of the Administrative Council. A suspended member may be reinstated only by a three-fourths vote of the Administrative Council.

265 Suspended Members Precluded from Benefits

Sec. 5. A suspended member shall be precluded from benefits of the Association and shall not be reinstated until all accrued assessments have been paid.

Explusions—Notice to be Given of Intention to Expel. May Appear before Administrative Council

Sec. 6. No member shall be expelled without thirty days

written notice from the Commissioner of the proposed expulsion, and such member shall have the right to appear before the Administrative Council, either in person or by attorney, to present a defense.

Members to be Notified of Expulsion

Sec. 7. Notice of the expulsion of a member shall be mailed promptly to each member of the Association.

Article XII.

Benefits of Membership

Members in Arrears not Entitled to Benefits

Section 1. No member in arrears to the Association for thirty days shall participate in the benefits of membership except by special action of the Administrative Council.

New Member not Entitled to Benefits for Ninety Days

Sec. 2. No member shall be entitled to the benefits of membership until ninety days after date of official enrollment; but, if labor trouble is threatened or declared against such member before enrollment, the Administrative Council at its discretion may direct the Commissioner to take measures to prevent or combat a strike. In such event the member shall agree in writing to pay all expenses incurred by the Association in his behalf.

Article XIII.

Strikes and Lockouts

How to Proceed in Case of Labor Disputes

Section 1. In the conduct of labor disputes members must proceed in the manner which the Constitution and By-Laws prescribe, failing in which they shall forfeit all right to the financial or moral support of the Association, except as special relief measures may be authorized by the Administrative Council.

Defense of Strikes to be Handled by Administrative Council

Sec. 2. The defense of a strike or lockout which has been authorized by the Administrative Council shall be conducted only under its direction or that of its authorized representative.

Methods of Relief and Protection

Sec. 3. In the case of a strike in the shop of a member, the Association may, upon request of the member, assist in procuring workers to replace the strikers; but the number of workers so procured shall not exceed seven-tenths of the number of striking employes covered by the member's regular assessment for the current quarter. Nor shall such member be entitled to any additional relief because of any penalty which may have been invoked under Section 7, Article VII. Other methods may be adopted by the Administrative Council for the relief of members in times of strikes or lockouts.

Disagreement as to Measure or Method of Relief

Sec. 4. Should the Commissioner and a member disagree as to the measure or method of relief to be afforded dur-
267 ing a strike or lockout, such member may appeal to the Administrative Council and its decision shall be final.

No Member shall Willfully Provoke a Strike

Sec. 5. No member of this Association shall willfully provoke a strike.

No Member shall Adjust a Strike or Difficulty in Violation of this Constitution

Sec. 6. No member shall adjust with his employes any strike or difficulty the settlement of which involves a violation of this Constitution or of the principles of this Association as set out in its Declaration of Principles. Questions arising as to the interpretation thereof shall be referred to the Administrative Council through the Commissioner.

Penalty for Settling without Approval of Administrative Council

Sec. 7. If, without the consent of the Administrative Council, a member shall settle a difference or strike, the defense of which has been assumed by the Association, such member shall repay to the Association all the moneys which the Association may have expended on account of having assumed defense of such difference or strike, and shall also be liable to suspension or expulsion.

Conditions under which Local Lockouts may be Approved

Sec. 8. This Association shall not countenance a local lockout proposed by a District or Local Branch unless members

employing nine-tenths of the operatives under the jurisdiction of such District or Local Branch shall have voted in favor of the same, and unless the Administrative Council shall have approved such lockout by a two-thirds vote, by ballot, at a Council meeting, or by a letter ballot.

268 General Lockouts not to be Declared Except by Convention of Four-fifths Entire Membership

Sec. 9. No general lockout shall be declared by this Association except by action had at an Annual or Special Convention at which four-fifths of the votes of the Association shall be represented. An affirmative vote of four-fifths of the votes cast at such Convention shall be necessary to declare a general lockout.

Two Weeks Written Notice of Convention

Sec. 10. When the question of a general lockout is to be voted on at a Convention, written notice to that effect must be mailed to each member at least two weeks prior to the Convention.

Article XIV.

Constitutional Amendments

Constitution, How Amended

Section 1. This Constitution may be amended by a two-thirds vote of the Association by letter ballot provided that the proposed amendment shall have been approved by a two-thirds vote of the Administrative Council or by the written request of at least twenty-five members of the Association. Adopted January 18, 1909.

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By-Laws

Article 1.

Duties of Officers

Duties of the President

Section 1. The President shall preside at Conventions of this Association and at meetings of the Administrative Council. He shall enforce the Constitution and By-Laws. He shall countersign checks and drafts drawn by the Treasurer

on the funds of the Association. He shall also perform such other duties as usually pertain to such office.

In Case of Tie

Sec. 2. In case of a tie vote in a Convention or in an Administrative Council Meeting, the President shall cast the deciding vote.

Duties of First and Second Vice Presidents

Sec. 3. The First Vice President shall perform the duties of the President during his absence or disability, or in case of a vacancy in the office of President. In the absence or disability of both the President and the First Vice President, the Second Vice President shall perform such duties.

Duties of the Treasurer

Sec. 4. The Treasurer shall have charge of and disburse the money of the Association, under the direction of the Administrative Council, and shall perform such other duties as ordinarily pertain to such office. He shall have custody of all vouchers, supervise the accounts of the Associa-
270 tion, and render reports at Annual Meetings of the Association, or whenever called upon so to do by the Administrative Council. In his absence or disability, the Administrative Council may designate a Treasurer pro tempore.

The Treasurer to Give Bond

Sec. 5. The Treasurer shall give a bond, the amount of which is to be fixed by the Administrative Council, such bond to be procured from an approved surety company and to be paid for by the Association.

Treasurer to Surrender Money and Accounts at Expiration of Term of Office

Sec. 6. At the expiration of his term in office the Treasurer shall surrender all money, books, records, and other property of the Association, which may be under his control, to his successor in office, when qualified, or to such other person as may be designated by the Administrative Council to receive them.

Audit

Sec. 7. The Treasurer shall cause a certified public accountant, nominated by the Administrative Council, to make semi-annual inspection and report as to the condition of his

and the Commissioner's accounts, the expense to be paid by the Association.

Commissioner

Sec. 8. The Commissioner shall have such authority and power as the Administrative Council may from time to time vest in him, and he shall perform such duties as the Administrative Council may require. He shall have such funds placed at his disposal by the Treasurer as may be determined
271 by the Administrative Council. He shall make a monthly financial statement, which, when approved by the President, shall become a warrant on the Treasurer for the replenishment of the Commissioner's Fund. He shall give such bond as the Administrative Council may deem proper, said bond to be procured from an approved surety company, the expense of which shall be paid by the Association.

Article II.

Fees and Assessments

Initiation Fee

Section 1. Each application for membership must be accompanied by an initiation fee of Fifty Dollars, which amount shall be refunded in case of non-election.

Payment of Pro-Rata Quarterly Assessment upon Notice of Election

Sec. 2. Upon notice of election, each applicant shall immediately pay to the Commissioner a pro-rata proportion of the current quarter's regular assessment for the unexpired term, dating concurrently with the notice of his election.

Official Enrollment

No elected applicant can be enrolled as a member of the Association until the above requirement shall have been complied with.

Article III.

How a Member Shall Proceed in Case of Strike

Disagreements, Demands, etc.

Section 1. In case of a disagreement with employes or in

case a demand is made by them which is likely to lead to
272 collective action on their part, immediate written notice must be given by the affected member to the Commissioner, or, if such member belongs to a Local Branch, he must notify the Secretary of such Branch, who shall immediately notify the Commissioner in writing. In either case, the member affected shall keep the Commissioner or the Branch Officers advised of any changes in the situation, and, in Local Branch territory, the Local Secretary must immediately transmit full information to the Commissioner.

Authorizations Entailing Expense to be in Writing

Sec. 2. No expenditure incurred by a member or by a Local Branch shall become a charge upon the Association unless previously authorized in writing by the Commissioner. Expenditures not so authorized in advance shall not be approved by the Commissioner, but shall be referred to the Administrative Council.

Relief Expenses Charged to Defense Fund

Sec. 3. Authorized relief expenses shall be paid out of and charged to the Defense Fund.

Article IV.

Meetings of Branch Secretaries

Administrative Council may call Meetings of Secretaries

Section 1. The Administrative Council may call such meetings of the Secretaries of the Branches as may be deemed expedient, the expense to be borne by the Association.

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Article V.

Conventions

Notice of Conventions

Section 1. At least two weeks before the Annual Convention the Commissioner shall mail to all members a written notice stating the time and place of holding such Convention.

Order of Business

Sec. 2. The order of business of Conventions shall be:
(1) Roll Call.

(2) Reading of minutes.
(3) Appointment of Convention committees.
(4) Reports of officers.
(5) Reports of standing committees.
(6) Unfinished business.
(7) New business.
(8) Reports of Convention committees.
(9) Report of Nominating Committee and election of officers.

Convention Committees

Sec. 3. The following Convention committees shall be appointed by the President:
Committee on Credentials,
Committee on Resolutions,
Committee on Constitution,
Auditing Committee,
Convention Committee,
whose duties shall be those generally pertaining to such committees and to report on matters referred to them. These committees shall consist of three members each, except
274 the Committee on Resolutions, which shall consist of five members.

Resolutions to be Submitted in Writing

Sec. 4. At Conventions, Resolutions shall be presented in writing and referred, after reading, without discussion, to the Committee on Resolutions, which shall report back to the Convention, with its recommendations. The Committee on Resolutions may report at any time during sessions of the Convention.

Article VI.

Parliamentary Authority

Parliamentary Authority

Section 1. Roberts' Rules of Order shall be the parliamentary authority of this Association.

Article VII.

Amendments.

By-Laws How Amended

Section 1. These By-Laws may be amended in Convention by a two-thirds vote or by letter ballot, two-thirds of the entire membership voting in favor of the amendment.

Adopted January 18, 1909.

275 Declaration of Principles

We, the Members of the National Metal Trades Association, declare the following to be our principles, which shall govern us in our relation with our employes:

Concerning Employes

1. Since we, as employers, are responsible for the work turned out by our workmen we must have full discretion to designate the men we consider competent to perform the work. While disavowing any intention to interfere with the proper functions of labor organizations; we will not admit of any interference with the management of our business.

Strikes and Lockouts

2. This Association disapproves of strikes and lockouts in the settlement of industrial disputes. This Association will not countenance a lockout, unless all reasonable means of adjustment have failed; neither will the members of this Association deal with striking employes as a body.

276 Relations of Employes

3. Every workman who elects to work in a shop will be required to work peacefully and harmoniously with all his fellow employes, and to work loyally for the interests of his employer.

Apprentices, Etc.

4. The number of apprentices, helpers and handymen to be employed will be determined solely by the employer.

Methods and Wages

5. The responsibility for management, methods and the production of our shops rests upon us, and no restriction

upon these matters will be allowed. We will require proper production for proper compensation.

Employes will be paid by the hourly rate, by premium system, piece work, contract or other system, as the employers may elect.

Freedom of Employment

6. It is the privilege of the employe to leave our employ whenever he sees fit and it is the privilege of the employer to discharge any workman when he sees fit.

Concerning Disagreements.

7. The above principles being absolutely essential to the successful conduct of our business, we cannot permit the operation of our business thereunder to be interfered
277 with. In case of disagreement concerning matters not covered by the foregoing declaration and not affecting the economic integrity of the industry, we advise our members to meet such of their employes who may be affected by such disagreement and endeavor to adjust the difficulty on a fair and equitable basis.

Equitable Wages

8. In the conduct of our business and in the payment of wages, by whatever system, this Association will not countenance any conditions or any rates of compensation which are not reasonable and just or which will not allow a workman a proper wager in proportion to his efficiency and productiveness.

278 Branch Offices

National Metal Trades Association

Boston, Mass.	186 Purchase St.
Canton, Ohio	301 New Vicary Bldg.
Chicago, Ill.	224 N. Clinton St.
Cincinnati, Ohio	705 Elm St.
Cleveland, Ohio	2014 Union Trust Bldg.
Columbus, Ohio	Keith Theatre Bldg.
Detroit, Mich.	1319 Book Bldg.
Erie, Pa.	808 Commerce Bldg.
Grand Rapids, Mich.	420 Kelsey Bldg.
Hartford, Conn.	616 Capitol Ave.
Indianapolis, Ind.	1406-7 Merchants Bank Bldg.
Jackson, Mich.	144 W. Cortland St.
Jamestown, N. Y.	110 E. Fourth St.
Milwaukee, Wis.	439 E. Water St.
Moline, Ill.	1532½ Third St.
Muskegon, Mich.	Durham Block.
New Haven, Conn.	207 Orange St., Rm 204.
New York, N. Y.	111 Broadway, Room 1300.
Philadelphia, Pa.	1518 Sansom St.
Pittsburgh, Pa.	1632 Oliver Bldg.
Providence, R. I.	420 Butler Exchange.
Saginaw, Mich.	217 Federal Ave.
Springfield, Mass.	11-12 Court House Pl.
St. Louis, Mo.	1750 Railway Exchange Bldg.
Syracuse, N. Y.	137 W. Onondaga St.
Toledo, Ohio	501 Nasby Bldg.
Utica, N. Y.	226 Union Station Bldg.
Waynesboro, Pa.	Waynesboro Trust Bldg.
Wilkes-Barre, Pa.	232 Miners Bank Bldg.
Worcester, Mass.	44 Front St.

279 **BOARD EXHIBIT NO. 31.**

6/18/37

Certificate Number 16234

STATE OF ILLINOIS
Office of
The Secretary of State
(Cut)

To all to to whom these presents Shall Come, Greeting:

I, Edward J. Hughes, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of the Certificate of Incorporation of Rare Metal Workers of America Local No. 1, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 26th day of May, A. D. 1937.

Edward J. Hughes,
(Seal) ***Secretary of State.***

280 Certificate Number 5377

STATE OF ILLINOIS
Office of
The Secretary of State
(Cut)

To all to to whom these presents Shall Come, Greeting:

Whereas, a Certificate, duly signed and acknowledged has been filed in the Office of the Secretary of State, on the 19th day of April A. D. 1937, for the organization of the Rare Metal Workers of America Local No. 1 under and in accordance with the provisions of "An Act Concerning Corporations" approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof a copy of which certificate is hereto attached;

Now Therefore, I, Edward J. Hughes, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said Rare Metal Workers of America Local No. 1 is a legally organized Corporation under the laws of this State.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 19th day of April A. D. 1937 and of the Independence of the United States the one hundred and 61st.

Edward J. Hughes,
(Seal) *Secretary of State.*

281 This Statement Must Be Filed in Duplicate

Fee $10

(Stamp) Paid Apr 19 1937 I. F. $10 F. T. $ F. F. $ W O.S.

State of Illinois, } ss.
Lake County. }

To Edward J. Hughes, Secretary of State:

We, the undersigned T. Sylvin, H. Weddell and A. R. Johnson, citizens of the United States, propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act concerning Corporations," approved April 18, 1872, and all Acts amendatory thereof; and for the purpose of such organization we hereby state as follows, to-wit:

1. The name of such corporation is Rare Metal Workers of America Local No. 1.

2. The object for which it is formed is To Bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or mutual aid or other mutual aid or protection.

(Stamp) Received Page 0365 Line 7 Apr 19 '37.

3. The management of the aforesaid corporation shall be vested in a board of three Directors.

4. The following persons are hereby selected as the Direc-

tors to control and manage said corporation for the first ye of its corporate existence, viz.:

Name	Address		
	Number Street	City	State
T. Sylvin	1521 Lincoln St.,	North Chicago,	Ill.
H. Weddell	1347 Grace St.,	Chicago,	Ill.
A. R. Johnson	20 Wisconsin Ave.,	Waukegan,	Illinois.

5. The location is in the city of Waukegan in the county of Lake in the State of Illinois, and the post office address of its business office is at No. 20 Wisconsin Street in the said City of Waukegan, Ill.

Signed, T. Sylvin
H. Weddell
A. R. Johnson

282 State of Illinois, } ss.
Lake County. }

Adele B. Miller, a Notary Public in and for the County and State aforesaid, do hereby certify that on this 17th day of April, A. D. 1937, personally appeared before me T. Sylvin, H. Weddell and A. R. Johnson, to me personally known to be the same persons who executed the foregoing certificate, and severally acknowledged that they had executed the same for the purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

(Seal)

Adele B. Miller,
Notary Public.

2509

The 196339

.....

.....

Location .....

.....

Certificate

Fee for Incorporation of
Organization Not for
Pecuniary Profit

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That all societies,

corporations and associations not for pecuniary profit, hereafter organized under the laws of the State of Illinois, shall pay to the Secretary of State before there shall issue a certificate of incorporation, a fee of $10.00. (Section 25, Chapter 53, Smith-Hurd, Illinois Revised statutes.)

Filed Apr 10 1937 Edward J. Hughes Sec'y of State.

283

Certified Copy
of

State of Illinois,
Office of the
Secretary of State.

284

BOARD EXHIBIT NO. 32.

6/18/37

Rare Metal Workers of America
Local No. 1
Incorporated Under Illinois Laws

Waukegan, Ill., April 23 1937

This is to certify that
La Verne Huff
whose signature appears on the margin is a member in good standing of the R. M. W. of A. for month of May.
Dues paid $ .25
Signed: T. H. Sylvin, *President* Signed: R. Johnson, *Secretary-Treasurer.*
(Typographical Union Label) 1
(In right-hand margin) La Verne Huff.
Signature.

Board Exhibit No. 33

Petition Placed on Board for
To meet in Bldg. 1/4 to vote
3 P. M.

Do you as an employee of this Company favor an independent labor organization?

	Yes
	No

Army Issued 24 Tickets
Returned and Paid for 6,
$2.40

~~Received of 6 Dinners~~
~~$19.30~~.

Meeting 3 P. M. at
2 Bldg, 2

286 BOARD EXHIBIT NO. 34.

6/23/37

Trade at Home
Spend at Home

Final Edition

The Waukegan News-Sun

Waukegan, Illinois, Wednesday, March 10, 1937.

Volume XL (40th year)—No. 58. Price Three Cents

Twenty Pages

Supervisors Back Sheriff

A. F. of L. Chief to Help Steel Company Unions in Fight Against C. I. O.

Board Votes Fund to Pay Deputy Hire

Law and Order as Maintained by Sheriff Doolittle Wins Support of Supervisors at March Meeting.

Law and order as maintained by Sheriff Lawrence A. Doolittle was given the support of the board of supervisors yesterday at the last final regular session of the present board.

On two occasions during the afternoon session of the board, in the midst of a gallery of sitdown strikers and others of the Fansteel Metallurgical corporation plant in North Chicago, Sheriff Doolittle was given the backing of the supervisors for executing his orders with due regard for life and property rights as the peace officer of the county at the Fansteel and Zion Industries strikes.

Deciding that an emergency exists now as a result of the Fansteel strike, the board voted a special appropriation of $13,000 for deputy hire and supplies for the sheriff's office. The board also approved a bill for $1,785 for 357 days of service by 215 special deputies at the Fansteel plant during the tense periods before and after the gas attacks on Feb. 19 and 26 to evict the sitdowners.

Did His Duty

"We would not think much of the sheriff if he did not carry out the order of the highest court in Lake county," Supervisor H. D. Kelsey of Barrington declared. "If he had come back with the court order and said I cannot serve it, we would have immediately charged him with malfeasance of office.

"I believe the sheriff should be complimented for executing the court order with regard for human life and for protecting property rights."

Other supervisors rallied to the support of the sheriff when one of the assistant supervisors, A. J. Sutkus, wanted the sheriff to attach a full list of the special deputies hired at the Fansteel and Zion strikes to the bills before the board for approval.

"The sheriff should not be made to bring the names of the special deputies here," Assistant Supervisor Arthur Swanson of Highland Park objected. "When it was learned that one man from the north shore had been serving as a special deputy, he had been threatened. The names are available to any supervisor who wishes to see them."

Other members of the board approved Swanson's explanation.

Washo Rebuked

One brief skirmish occurred toward the end of the board session when Supervisor Harry W. Washo of Ela stated, "I saw by the papers that the Fansteel company was a $1,500,000 corporation, so I did a little investigating and in County Clerk Russ Alford's office I found the assessed valuation was $80,595 . . ."

Supervisor Dan Hentges of Lake Forest interrupted Washo with a fierce verbal attack.

"You mind your own business and quit sticking your nose into my township," Hentges shouted at Washo. (The Fansteel Metallurgical corporation property in North Chicago is in Shields township.) "We have an assessor in our township who watches these things, and if there is more taxable property it will be shown. Why a few years ago I could have bought the whole Fansteel company for $50,000. Now it is paying more taxes than you (Washo) and your whole township."

Supervisor Kelsey halted the skirmish with a statement that

the question before the board of supervisors did not involve the merits of the strike at Fansteel.

Passes 25 to 4

The resolution, introduced by the finance committee of the board composed of Supervisors Leo Fenlon, W. W. Steele and Emmett McShane, stating that an emergency exists as a result of the Fansteel strike and asking for a special appropriation of $8,000 for deputy hire and $5,000 for supplies and equipment for the sheriff, was passed by a vote of 25 to 4 on a roll call. The supplies include gas and equipment to shoot the gas and other accessories.

Following the passage of the special appropriation, a resolution, signed by the resolutions committee of the board composed of Supervisors Harold E. Pillifant, George D. Meyer and Cliff Evans, asking for the payment of $1,785 to special deputies hired in the Fansteel strike was approved by a vote of 28 to 1.

A claim of $280 for deputy hire in the Zion strike was voted paid by the board in the consideration of miscellaneous claims.

Fansteel Pays Employes

While the board of supervisors was in session the management of the Fansteel Metallurgical company was sending out checks to approximately 238 employes as salary for the period from 2:30 p. m., Feb. 17 to Feb. 27. Accompanying these checks were letters signed by R. J. Aitchison, president of the company, which said in part:

"All employes who have returned to work will receive from the company pay checks for the period from 2:30 p. m., Feb. 17 to Feb. 27, which covers the time that our plant was out of our control and illegally held. The benefit of like payment will be extended also to all who are reinstated as employes on or before March 12."

287 BOARD EXHIBIT NO. 35.

6/21/37

(Letterhead of Fansteel Metallurgical Corporation, North Chicago, Ill.)

Feb. 25, 1937

Mr. Arthur Holm
142 McKinley Ave.
Waukegan, Illinois

Dear Sir:

Effective immediately your employment with the Company is terminated. You will receive your compensation for the entire last period of February and your check is now available for you.

You are directed to deliver to me immediately your employees identification card, master key and any other property of the company in your possession, and your check will be delivered to you at that time.

Very truly yours,
Fansteel Metallurgical Corp.
A. J. Anselm,
A. J. Anselm,
Superintendent.

AJA:WS

288 BOARD EXHIBIT NO. 36.

6/22/37

Range of Pay of Employees Fansteel Metallurgical Corporation

The minimum rates are as follows:

For men —50¢ per hr.
For women—40¢ per hr.

Department	Range of Pay Per Hr.
Wire Department	.50 to .80
Wire Inspection	.40 to 1.00
Railway & Industrial Signal	.45 to 1.00
Swaging	.55 to 1.00
Rolling and shearing	.55 to 1.00
Tantalum Fabrication	.65 to .80
Tool Room	.50 to 1.00
Machine Shop	.55 to 1.00
Chemical Department	.50 to .80
Sintering and Annealing	.50 to .80
Shipping Room	.50 to .78
Stock Room	.50 to .65
Cutting	.45
Grinding	.45
Contact Setup	.42 to .75
Contact Inspection	.40 to .55
General Contact	.50 to 1.00
Watchmen, Yard, Firemen and Janitors	.50 to .70
Maintenance	.80 to 1.00

289 BOARD EXHIBIT NO. 38.

6/23/37

Praise Sheriff for Strike Act
Fansteel Company Thanks All Officials; Report Material Loss of $25,000.

President Robert J. Aitchison of the Fansteel Metallurgical corporation today issued the following statement concerning the ouster of the discharged employes from the company property:

"In conformity with the orders of the circuit court of Lake

county, Sheriff Lawrence A. Doolittle with 40 deputies today removed 60 discharged employes from Plants 3 and 5, which were restored to the company. We are grateful that the sheriff's action was so ably planned and carefully carried out that no serious injury to anyone resulted.

"From a preliminary inspection and survey of Plants 3 and 5, we have arrived at the tentative conclusion that:

"(1) There has been no major injury to the machinery itself.

"(2) Materials, parts and supplies of an approximate value of $25,000.00 have been destroyed or otherwise rendered useless.

"(3) Physical injury to the buildings themselves, including broken window panes, has resulted in damage of approximately $7,500.00.

Speed Reopening

"It is the definite intention of the company to reopen the plant and resume operations as soon as possible after the necessary rehabilitation can be effected. Building repairs and steps toward replacement of destroyed parts, materials and supplies will be undertaken promptly and will be speedily consummated. We are notifying our employes to this effect and will advise them shortly of the date operations will be resumed.

"All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the 80 men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for re-employment from such men will receive favorable consideration.

"We cannot condone the defiance of the courts or the resistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant.

"The management will continue its policy of dealing directly with its own employes, either individually or collectively, and will not permit outside professional agitators to inject themselves between us and our employes."

Board Exhibit No. 39

1602 Human Eng

NATIONAL LABOR RELATIONS BOARD

CASE NO. 2 | EXHIBIT NO. 39

IN THE MATTER OF Fansteel

DATE 6/29/37 WITNESS Hola

SMITH & HULSE, OFFICIAL REPORTERS

BY Worden

PERMIT TO WORK OVERTIME

Dept. _____ Date _____

Men _____ Clock No. _____

Nature of Work _____

Approved _____ Foreman

Approved _____ Supt.

291 BOARD EXHIBIT NO. 40.

6/25/37

New Productive Employees Upon Reopening After February 26, 1937. (Many of those named below had formerly been employed by the company but were not working on February 17, 1937)

Contact Department—Welding	1
Maintenance Department	2
Swaging Department	6
Rolling	1
Shipping Department	2
Punch Press	1
Copper Plating and Welding	2
Wire Department	3
Machine Shop and Tool Room	3
General Laborers	2
Chemical Department	10
Sintering and Pressing	2
Total	35

Board Exhibit No. 41-B

Jan 8 - 21½ grp 1217 (12) .434
53 slabs 1290 6.6

Jan 11 -
12 grp 1217 - (11) (12)
5 Shra Daywork (14) .405
62 slabs 1325 K

Jan 12 -
5½ grp 1216 (6) 433
½ grp 1217
1 Shra Daywork
11 slabs 4 ft

Jan 13
8 hrs Daywork 320
69 slabs 1348 -

Jan 14 -
8 hrs Daywork - 320
35 grp 1216 - 40460

Jan 15 - 1½ grp 40460 - 320
5 grp 1216 - 40460
8 grp 1216 - 1318 -

Board Exhibit No. 41-A

Dec 24 - 11 grp 40609 - 519
75 grp 40033

Dec 30
75 grp 40507 (6.3) - 472

1937

Jan 4 - 62 grp 40509 (6.3) - 390

Jan 5 - 47 grp 40509 370
1 grp 1273
1 grp 1286
1 grp 40566
1 grp 40527

Jan 6 -
27 grp 1290 7. (7.6) - 430
26 grp 1095 - (8)

Jan 7 -
133 slabs 1290 - 6.6 - 438

1213

Board Exhibit No. 41-D

Jan 26 - 8 jugs 1095 (8.8) - 4.37
51 slabs 1248 (4.8)

Jan 27 -
70 jugs Q40240 - 420

Jan 28
33 jugs Q40527 - 435

Jan 29
18 jugs Q40240 - 424
24 " Q40527 (12.3)

Jan 30
70 jugs Q40240 - 420

Feb 1 just short
2 jugs Q40240 - 420
68 " Q40053

Feb 2.
38 jugs Q-40053 . 420
32 " Q-40240

Feb 3 -
87 jugs Q40240 - 5.22

Board Exhibit No. 41-C

Jan 18 - 27 jugs Q40509 (6.3) - 350
4½ slabs Ridgerock

Jan 19 -
56 jugs Q40509 3.87
9 slabs 1 jug 1823 + Rebate

Jan 20 - 41 jugs Q40509 (13) - 4.09
5½ jugs 1217 (12.1)

Jan 21 - -
36 jugs Q40509 3.78
2 jugs [illegible] (11)
7 jugs Q40466

Jan 22 - 4 jugs Q40723 -
7 jugs 1095
50 slabs 1248 (4.9)

Jan 25 -
20 jugs 1095 (8.8) - 435
53 slabs 1248 (4.9)

5121

Board Exhibit No 41-F

Feb 13 - 47 frgo 2195 (6.6) - 320

Feb 15 - 11 frgo 2195 (6.6)
43 frgo 740033 - 429
30 dslab 1263 (8.3-24)

Feb 11
78 frgo 740033 - 468

Board Exhibit No. 41-E

Feb 4 87 frgo 740240 - 522

Feb 5 - 87 frgo 740240 - 522

Feb 8 - 33 frgo 740527 - 420

Feb 9 - 22 frgo 740240 - 429
8 dslab 2130 (7.7)
32 frgo 1216 (6.6)
2 " 1095 (8.8)

Feb 10
59 dslab 1248 (4.9) - 485
18 frgo 1094
9 dslab 2030

Feb 11 9 hrs.
45 frgo 1094 (6.11) - 495

Feb 12 - 45 frgo 1094 - 495

299 BOARD EXHIBIT NO. 42.
6/25/37

By-Laws of the
Rare Metal Workers of America,
Local No. 1, Lake County, Illinois

Article I.

Sec. 1. This organization shall be known as the Rare Metal Workers of America, Local No. 1, Lake County, Illinois.

Sec. 2. To independently organize all workmen engaged in the craft except foremen, office workers, chemists and metallurgists to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to educate the craft to cooperate in every movement which tends to benefit the organization and the members thereof and the public; that our members must be sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable independent labor organization and to secure the best possible conditions for our membership.

Sec. 3. To further these objects we ask our members to be loyal to this organization and give this organization their full support, and it is their duty to see that the following by-laws are enforced.

Article II.

Organization.

Sec. 4. The Rare Metal Workers of America, Local No. 1, is organized for the purpose of bettering the conditions of the craft and to bargain collectively through representatives
of their own choosing and to engage concerted action for
300 the purpose of collective bargaining or other mutual aid
or protection independently of any other organization, and we therefore claim trade jurisdiction over all persons engaged in the craft in Lake County, Illinois.

Sec. 5. The membership fee shall be fifty cents for each charter member.

Sec. 6. The Executive Board shall have the authority to set the membership fee on all others who desire to affiliate with this organization and on all unorganized groups.

Sec. 7. Any applicant for membership shall make application for membership within two weeks from the date of employment, and the application shall be accompanied by a one-dollar membership fee.

Sec. 8. No applicant shall be allowed to sit in any meeting until voted on and accepted by the local at the next regular meeting after application for membership is presented by a majority present at the meeting.

Article III.

Dues, Assessments and Delinquencies.

Sec. 9. The dues shall be fifty cents per month payable in advance.

Sec. 10. There shall be no assessments imposed upon the members at any time or for any reason.

Sec. 11. All members in arrears 60 days shall be immediately investigated. All members working at the craft who are more than sixty days in arrears in dues shall stand suspended, and must appear before the Executive Board before disposition of their case. Any member who has been suspended for nonpayment of dues at a regular meeting cannot be reinstated unless he pays a $1.00 reinstatement fee and all dues charged against him at the time of his suspension.

301 Sec. 12. Charges against members shall be made in duplicate to the Executive Board. The individual against whom charges are preferred shall be notified and given a copy of the charges and shall be granted sufficient time in which to prepare his side of the case and shall be notified as to the time and place of the trial. He shall be given a trial before the Executive Board, and the findings of the Executive Board shall be final, unless either side desires to appeal from the decision of the Executive Board. All appeals from the Executive Board shall be taken before the Assembly.

Article IV.

Meetings.

Sec. 13. Regular meetings shall be held once each month. All members must be present at each meeting and those

absent three consecutive months, without a legitimate excuse, shall be fined $1.00.

Sec. 14. A special meeting of the organization may be called at any time by a majority of the Executive Board, but no business can be transacted except that named in the call.

Sec. 15. A quorum shall consist of fifteen members in good standing.

Article V.

Withdrawal Cards.

Sec. 16. Withdrawal cards will be granted to all not working at the craft for two months or less requiring no dues for that period. Withdrawal cards held over two months require bearer to pay all back dues.

Article VI.

Nominations and Elections.

Sec. 17. The officers of the organization shall consist of a President and Vice-President and Secretary and Trea-
302 surer, three Trustees, (all of whom shall be elected at large), and an Executive Board. The Executive Board shall consist of the President, Vice-President and eleven Representatives to be selected as follows, to-wit: one representative from Building 5, from shipping room, stock room and inspection department; one representative from the entire second floor, Building 5; one representative from the entire third and fourth floors, Building 5; one representative from maintenance and yard gang; one representative from the entire basement of Building 3, one representative from the first floor of Building 3, from assembling and contact inspection department; one representative for the rest of women in Building 3 from the first floor; one representative of men from the first floor, Building 3; one representative from the entire second floor, Building 3; one representative from Buildings 8 and 9; and one representative from Buildings 1 and 2.

The three Trustees shall be elected by the Assembly at the same time that the other officers are elected, but one of which trustees shall serve for one year, one for two years, and one for three years. After the first election of trustees, they shall draw lots to determine who shall hold the respective terms of one, two, and three years respectively. Nominations of offi-

cers of this organization shall be made at a meeting in April of each year, and installation and taking of offices shall be the first meeting in May following the election. All officers and members of the Executive Board (except trustees) shall hold office for one year. No officer can hold more than one elective office.

Article VII.

Salary or Compensation.

Sec. 18. No officer shall draw any salary or compensation except the Secretary and Treasurer. The salary of the Secretary and Treasurer shall be fixed by the Assembly at the first regular meeting after election.

303

Article VIII.

Duties of the Officers.

Sec. 19. It s ll be the duty of the President to preside at all meetings of the organization and transact such business as the organization may direct. He shall see that the by-laws are enforced. The President shall call the meetings to order promptly, and in case of his absence the Vice-President shall act for him. If both are absent the Secretary shall perform their duty, and the organization shall proceed to elect a chairman who shall conduct the meeting until the arrival of the proper officers.

Sec. 20. The Secretary's duties shall be to keep a record of all meetings. The Treasurer shall keep an accurate account of all moneys received and paid out by him upon the order of the Trustees, and shall collect the dues and fines, if any. The Treasurer's report to be read at all regular meetings of all moneys received and payed out since previous meeting. Trustees shall have custody of all property of the organization and pass on all bills to be incurred or approved before payment.

Sec. 21. Any member of this organization may bargain as an individual with the employer as to rates of pay and wages or working conditions or any other matter pertaining to his or her employment. Any member of this organization who shall feel aggrieved or have any other complaint as to rates of pay, wages or working conditions, or any other matters pertaining to his or her employment shall submit such

grievance or complaint in writing in duplicate to the member of the Executive Board who represents his group, who in turn shall submit one copy of the same to the President, whose duty it shall be to immediately call a meeting of the Executive Board to act on the complaint or grievance, as the case may be. The action of the Executive Board shall be final. The Executive Board shall consist of the President, Vice-
304 President, and Representatives of each group.

A strike can only be called upon a vote of 75% of the entire membership of said organization. All voting requiring 75% majority of members of the organization shall be by secret ballot.

This organization cannot affiliate without a vote of seventy-five per cent of all the members thereof at a regular or specially called meeting. Any member of this organization may affiliate with any other union, if he so desires, but for the purpose of collective bargaining with Fansteel Metallurgical Corporation, he must cooperate with this organization.

There shall be an Arbitration Board which shall consist of three members of the Executive Board, two permanent and one from the group where any grievance arises. The two permanent members of said Board shall be selected by the Executive Board. Should the grievance occur in the group of which a permanent member is selected, then and in that event the third member shall be selected by the Executive Board from another group.

Article IX.

Miscellaneous.

Sec. 22. Special Committees may be selected by the President from time to time as deemed necessary. They shall act promptly on matters referred to them and may be discharged at the will of the President. All committees shall perform the duties assigned them within the time specified and report their result to the Local in writing, which same shall be kept in the files of the Secretary.

Sec. 23. The Executive Board has the privilege of fining, within reason, any member for violation of any of the by-laws of this organization, upon giving him notice of the charges and a fair and impartial trial.

Sec. 24. Seniority rights of employees shall be covered in the working agreement with the employers.

305 **Article X.**

Amendments.

Sec. 25. The wording of any of the Articles or Sections of these By-Laws cannot be changed except by amendments made in due form. Amendments can be made at any regular meeting in the following manner: After the wording of the proposed amendment has been agreed upon by the Assembly, it shall be read to said Assembly twice by the Secretary. The proposed amendment shall then be tabled until the next regular meeting. At this meeting it shall be brought out under new business and read again to the Assembly by the Secretary. After this reading the voting shall follow. A majority of the votes cast is necessary to enact the amendment or reject it.

307 BOARD EXHIBIT NO. 43.

6/25/37

State of Illinois } ss.
County of Lake }

IN THE CIRCUIT COURT OF LAKE COUNTY.

Fansteel Metallurgical Corporation, *Plaintiff*,
vs.
Lodge 66 of the Amalgamated Association of Steel, Iron and Tin Workers of North America, *et al.*, *Respondents.* } Gen. No. 37551.

OPINION OF COURT.

June 8, 1937.

308 Court convened pursuant to recess taken at 2:30 o'clock P. M. of the same day.

The Court: Gentlemen, I presume that you having had your say it is now my turn. I have listened with the closest attention to everything that has been said during this hearing covering the period of six days or more, and I am now going

to attempt to give you my conclusion as to what I—the deductions which I draw from the evidence that was submitted here in court.

The Fansteel Company is a corporation duly organized and doing business at North Chicago, Lake County, Illinois; it employs upwards of 380 people; its plant consists of about seven and a half acres of land upon which are fifteen buildings bearing numbers. Buildings 3 and 5 were occupied by strikers from February 17th to 26th inclusive. These two buildings were vital points in keeping the plant in operation. In Building 3 about 100 persons were employed, in Building 5 about 67 persons were employed. At about 2:30 P. M. on February 17th, 1937, the whole plant was shut down by certain of the employees refusing to proceed with their regular line of duties. It appears from the evidence that certain of the employees of the company recently had become members of a union at the suggestion and under the guidance and directions of persons strangers to them and to the company for which they were working, which said union was called Lodge No. 66 of the
309 Amalgamated Association of Iron, Steel and Tin Workers of North America, an affiliate of another group of unions, or union, referred to generally as CIO, with headquarters some place not revealed by the evidence.

It appears further that on said 17th of February a group of persons referred to as a bargaining committee of said Lodge 66 left their duties as employees of said company and called upon the managing officer of the company making certain demands regarding what said committee called "collective bargaining" and also the recognition of said union to that end. All this on company time. Said committee received an indefinite answer, and the persons composing said committee immediately retired to some part of the company's plant and decided to call a strike. That by some method not revealed by the testimony, within a few minutes word reached the different parts of the plant, and the plant was shut down by the strikers and production ceased, the workers, however, remaining in and about the various buildings of the plant, idle and refusing to perform their customary duties. That almost immediately all doors, especially in Buildings 3 and 5, key buildings of the plant were barricaded, and all superintendents, managers, officers of the company were refused admittance. By reason of the key premises of said plant being thus seized and closed, the whole industry was brought to a complete standstill.

The company procured an injunction out of the Circuit Court of Lake County, Illinois, commanding said occupants so in illegal possession of said buildings to vacate the same, which injunction writ was served on said strikers by the
310 sheriff of said county or his duly qualified deputies by reading the same to said strikers as they were crowded about the open windows in the buildings 3 and 5 and by the sheriff or his deputies informing said strikers orally the purport of said writ and by handing copies of said writ to the persons so about said windows, one copy for each person known to be within said buildings. The sheriff demanded entrance to said buildings by virtue of said writ and was refused admittance; that the copies of said writ of injunction were posted over all doors leading into said buildings and in numerous other places in and about the premises. That all occupants of said premises 3 and 5 knew of the sheriff's demands and of the existence of said writ or could have known every detail except by wilful act of negligence they refused to acquaint themselves therewith. That all occupants knew or could have known by the exercise of the least amount of common sense that they were trespassers and unlawfully occupying said premises to the company's damage and against the peace and dignity of the community and in direct violation of the solemn mandate of this court served upon them by the duly qualified officers of said court, county and state. That disregarding said writ, the said occupants determinedly, doggedly and wilfully refused to vacate said premises, but continued to refuse and resist the demands for possession made upon them, and they, acting in agreement with confederates not within said premises set about to arrange, or had arranged in advance, to have food, cooking utensils, bedding, etc. smuggled into said Building 3 and 5 for the determined purpose of keeping possession of said build-
311 ings indefinitely in flagrant defiance of said court injunction, the said outside confederates and meddlers doing this for the sole purpose of aiding and abetting those unlawfully inside and in a manner to encourage the occupants in said Buildings 3 and 5 to continue to resist the due processes of law, order and everyday ordinary common sense, decency and contrary to orderly government, peace and dignity.

The evidence clearly reveals that the sit-down strike at the plant of the Fansteel company was conceived in sin and born in inequity; that its origin sprang from the pervented minds of so-called organizers who wander from factory to factory

throughout the country, having been sent by subversive designers under the guise of bettering the conditions of factory and others workers, but, in reality, are only fomenters of strife, trouble and defiers of law and order, their aim by subversive means being to gain their point and reap the advantage to themselves by disorganizing orderly business.

Such is the undoubted background of the sit-down strike at the Fansteel Company's plant.

I should have stated earlier that the evidence is beyond question that every striker in Buildings 3 and 5 was discharged by the company immediately it was learned that they had forsaken their duties and refused to continue with their assigned work.

Many of the Company's employees have been with the Company for years; but the evidence does not reveal that there was ever any disharmony with the Company, or any
312 unrest or dissatisfaction among the employees until after certain of those known peripatetic so-called organizers came into their midst and preached to them subversive doctrines of advantage by their joining hands and forming a chain with numerous other long-named groups and all dominated by some supreme Mogul having dictatorial propensities.

While the matter before us to receive consideration and to decide is: Did these men who occupied Buildings 3 and 5 on the Fansteel Company's premises violate the Injunction order of this Court issued and served on them on February 18, 1937. No Court can deliberately shut his eyes and stop up his ears against that which has come to the surface from evidence introduced in this inquest. It is perfectly obvious that such evidence as has seeped through on behalf of respondents is but a thin scum of the real facts behind the sit-down strike, and of the subversive purposes of the strike. That angle of the question was not germane to the immediate purpose of the inquiry which has been made, yet the respondents' counsel even over objections which were sustained, repeatedly and repeatedly endeavored to try to show that the men on strike were acting within what they termed "their rights", based upon some specious propaganda spawned by persons claiming to be benefactors, regardless of the fact that the Court's injunction had ordered them out of the premises; and witness after witness on the part of respondents tried to evade knowledge of the injunction and to justify their staying in the
313 premises in defiance of the Court Writ.

There can be no doubt that every man who remained in

the premises did so with full knowledge both actual and implied, of the existence of the Writ of Injunction. The officers of this Court did all they could by reason of the strikers barricading the premises, and all the law required of them under the circumstances, to make known the existence of the Injunction Writ.

These men agreed that they were acting as a unit. Their so-called "Bargaining Committee" voted the strike and the men who were in the building when the strike was called by not then and there protesting and leaving the premises must be regarded as endorsing the acts of the so-called "Bargaining Committee" which was presumed to speak for all of them; and the knowledge of the existence of the Writ must be imputed to all of them.

The proof is overwhelming that very many of the men in the premises actually heard the Injunction Writ read, and heard the Sheriff's demands for possession; yet they wilfully and designedly refused to surrender the premises.

Also, the evidence is overwhelming that the men deliberately decided to ignore the Injunction.

Before and after the Injunction was served, and before and after a Writ of Attachment was issued, certain foreign confederates knowing of the Injunction and of the Attachment Writs, by verbal communications and otherwise, advised, harrangued, encouraged, aided and abetted the men on strike and advised them "to stick", to "sit tight" and that
314 they would win, implying thereby their assumed object in striking, the intent of such encouragement clearly being in defiance of the legal ordinances of orderly government.

The evidence further is clear beyond all reasonable doubt, while it crept into the record as a side issue, that for a considerable period of time prior to February 17, 1937, the date of the strike, certain of the men, if not all of them who went on strike, were schooled, instructed and counseled on what to do, by outsiders not residents of the County and State; that they had even decided on what particular parts of the Fansteel Plant to tie up first, in the event of a strike; that the day in question, to-wit, February 17, 1937, was decided upon as the date to strike; that on that date, on Company's time, in the plant of the Company, the so-called "Bargaining Committee," whatever that may mean, left their duties as individuals and employees, met, counseled, deliberated, and voted to tie up the plant; that by prearrangement they ordered certain employees who were not in agreement with said strikers,

from the premises; that the strikers through their leaders barricaded the doors; they organized and assigned guards for doors, windows and other possible approaches to the inside of Buildings 3 and 5—key position buildings; that they set up a form of military organization having captains, sergeants, corporals, clerks, etc., etc.; that they as strikers refused admittance to superintendents, managers and officers of the Company, and generally they dominated Buildings 3 and
315 5 to the absolute exclusion of all direction and control over the said buildings and the machinery, equipment, supplies, materials raw and finished by any officer or agent of the company, and thereby absolutely stifled the business of the Company.

The evidence also is clear beyond all reasonable doubt that all men within Buildings 3 and 5 were discharged from the Company's employ for failure to continue the duties assigned to each of said striking men, and that the knowledge of such discharge was conveyed to said men and became the common knowledge of each of them; that said discharge was because said men ceased to continue in the performance of their several duties, and their said refusal to proceed with said duties ipso facto severed their connection with the Company; that at such discharge, by their remaining in said premises and their refusal to vacate the same said discharged men became trespassers.

The evidence further is overwhelming, notwithstanding attempts to conceal the facts, that a large majority of the striking men agreed to resist the sheriff, or other officers of the law, to the utmost, even to the extent of using physical force and miscellaneous weapons in the event such officers should attempt to take possession under the law. The proof of this agreement to resist is further and positively established by the fact that when the sheriff and his Deputies on February 19, 1937, demanded possession, and such demand for pos-
316 session was refused, and when the Sheriff and his assistants in the lawful exercise of his and their office attempted to force upon the barred entrances to said buildings, said Sheriff and his assistants were confronted by the strikers who through open windows, many of which the strikers had broken, bombarded the Sheriff and his force with miscellaneous missiles such as metal spools, tools, pieces of iron and other metals and objects, also acid bombs and dangerous weapons of a kind and character which if they had struck the sheriff and the members of his force of deputies, easily might

have killed him or them; that the onslaught of missiles thrown by the men from the Buildings 3 and 5 was so terrific and continuous, and the force of the Sheriff then at hand was so inadequate without using more convincing force which might have resulted in some deaths on the part of both strikers and the Sheriff and his force, said officers withdraw, leaving the strikers still in possession of said buildings 3 and 5 swearing and cursing at the Sheriff and his men and still in defiance of the Court's Injunction.

That in face of the fact well known to them that said strikers were occupying Buildings 3 and 5 in rebellious defiance of the injunction of February 17th, and of the general laws of the land relating to the rights of property, certain known agitators as mischief-makers from outside the fence surrounding the Fansteel Company's properties, and in
317 knowing defiance of the Injunction Writ, shouted encouragement to the men unlawfully within and offered to them assistance such as food, bedding, etc. and did bring such supplies and other things to said strikers, which articles of supplies were drawn into said buildings by means of ropes passed from said buildings outward and beyond the fence surrounding said Plant to said strikers within, thus aiding and abetting said strikers in their illegal occupancy of said premises and in defiance and utter disregard of the Injunction of this Court.

The evidence further reveals that beyond question certain of the known agitators acting from outside of the fence surrounding the Fansteel Plant were and are not residents of the State of Illinois, but that they were and are in the employ of and operating under and by direction of nationally known organizations claiming to be acting for the betterment of the conditions of the men and women employed in various industries throughout the land. It cannot but be observed that if such organizations and the agitators calling themselves advisors or counsellors of employees referred to above as abetting the strikers in question, were acting and doing as the agitators about the Fansteel Plant did act and do, and these last mentioned were so acting in accordance with the plans and wishes of said nationally known organizations, then, indeed, all such organizations and the men they sent out as advisors and propagandists cannot be classified other than as social and economic wreckers, meddlers and blatant disturbers of the harmony and tranquility of the whole community,

and should be frowned upon by every law abiding and peace and liberty loving citizen, and such cannot expect any self-
318 respecting Court to show them leniency.

It certainly appears strange to have it uncovered in an inquest in a Court of Chancery, in a cause involving the violation of an injunction against a group of strikers unlawfully and defiantly occupying property, that within less than three days from such unlawful seizure an investigator for the Sub-Committee of the Committee on Civil Liberties, presumed to be a body with lofty motives and a sponsor for the lawful rights of all citizens, regardless of creed, color, or political affiliation, should have had its ear so close to the ground as to hear the tread of strikers feet on the floors of the Fansteel Plant, and to be moved through said Committee's Chairman, or other person, to send such investigator to look in upon the Fansteel strike; and it is further most astonishingly strange that said investigator, immediately upon arriving at Waukegan, Illinois, should go directly to the rendezvous of two of the propagandists who had been and were encouraging and abetting the strikers in the Fansteel Plant, and then and there learned that an injunction mandatory in its nature had been issued out of the Circuit Court of Lake County commanding said strikers to vacate and yield up the premises seized and unlawfully occupied by them. And it is, further, astonishingly strange that said investigator visited the strikers almost immediately to inquire about their civil liberties, and that thereafter said investigator assisted in providing the strikers with food and other articles of comfort when they could have better served themselves in their own homes, and looked upon
319 them and acted toward them as if they were the subjects of oppression and abuse; but for some reason, unrevealed, said investigator did not counsel the strikers as a real liberty loving friend should have done to obey the laws and the orders of Court and go home, clean up, take food with their families, and honor the laws and respect duly constituted authority, instead of violating the sacret precepts that underlie a civilized community. Not so; this man, whether acting individually or as an investigator for any sort of a committee, by virtue of his position which was known to the strikers inside, and by his procuring for them food and other comforts, aided and abetted men who were acting in utter defiance of law and order and encouraged them to continue in such defiance, and by so doing he was and is in contempt of this court.

The whole community, far and near, from North Chicago in Lake County, Illinois, to the oceans east and west and to the Nation's boundary lines north and south have heard of the sit-down strike in the Fansteel plant; and the newspapers and magazines which have any respect for law, order and decency regarding civil and property rights have asked and are asking not only when and where are civil and property rights sacred, but the far more important questions: Are the laws of our land, that actually are recognized as laws, to be enforced? Are the Courts functioning, hitting on every cylinder of their power plant? Are their Writs and Orders to be obeyed, or are they to be mere practice tablets for attorneys, clerks, sheriffs and Judges to be laid aside and cooped up in pigeon holes in dusty cabinets to become bedding for rats and mice?

320 There are none so blind as those who will not see beyond the length of their own noses. Whenever men or women operatives in any plant, whether in North Chicago, Illinois, or elsewhere, anywhere, take it upon themselves to kick the hand which feeds them, and then seize the possession of that hand's property, and deny to it every legal right to operate a business, and let his plant fall into waste to an immeasurable degree, and all this to the unspeakable shame and disgrace of the whole community, far and near, then it is high time for law-abiding civic bodies, legislatures, and particularly for the courts which stand as the protectors of civil and property rights, to open their eyes and see what subversive propaganda and movements and men are doing in this our fair land, our home-land, and having seen, let them act to the full measure of their power and authority—those in authority, not in fear or favor of man or movements, or organizations, white or red, but in due regard of law and order, in conformity with their oaths of office and as the protectors of our common heritage—Our Country and its sacred precepts of peace, liberty and the pursuits of happiness.

I would be derelict and remiss in my duty as Judge of this Court, if, under the showing made in this hearing during the past six or more days, I closed my eyes to the horrible and dishonorable mess and rape upon law and order, and did not find the perpetrators or some of them, (for they are not all definitely known—some of the guiding hands and heads are using the strikers in question as cat's paws) 321 and some of the actors in the strike, Guilty of wilfully and wantonly violating the Writ of Injunction which was

issued out of this Court on February 18, 1937. I have burned the midnight lamps studying the record made and there can be no question but that the actors in the strike are guilty, not all, however, in equal degree. I feel that the offenders fall into five classifications or degrees of guilt.

The respondents may be divided into five classes:

In the first group, I place respondents who, according to the evidence, remained in the premises without any definite indication of a desire to withdraw or without giving evidence of their disapproval of the action of the more militant men who were acting in defiance of the Court orders. The evidence, however, does not show that these men took any definite part in defying the order of this Court or the efforts of the enforcement authorities of Lake County in carrying out the orders of this Court. These men are clearly in contempt of Court but their conduct was not such as to aggravate their offense. In this group, I place the following and upon them I impose the following judgment.

Mr. Collins: Before you pass sentence may I make a motion for a new trial?

The Court: No, you cannot.

Mr. Collins: May I make a motion in arrest of judgment?

The Court: No, you cannot. Judgment has not been entered as yet. As I call the names of these men I want them to come forward and take seats over here somewhere—

322 Steve Ark
Ed Brunke
Al. Bunton
Jerome Camernik, Jr.
Gus Canelakes
Vincent Dietmeyer
Joe Chudy
Clarence Dreyer
Stanley Grum
Art Holm, Jr.
George Kallio
Edward Kaucic
Tony Kancilja

The Court: Did Tony Kancilja respond?

A Voice: That is the man that is sick.

Frank Musech
Angelo Galbavy
David Nostell
Anton Nagode

Merritt Pratt
Robert Pratt
Andrew Rode
Alvar Rommppaine
Arvo Rommppaine
Peter Skarbalus
Luther Small

The Court: Are there twenty-three there? I will call the names:

	Steve Ark.	A. Here.
	Ed. Brunke.	A. Here.
	Al. Bunton.	A. Here.
	Jerome Camernik, Jr.	A. Here.
	Gus Canelakes.	(No Answer.)
	Vincent Dietmeyer.	A. Here.
	Joe Chudy.	A. Here.
	Clarence Dreyer.	A. Here.
	Stanley Grum.	(No answer.)
	Art Holm, Jr.	(No answer.)
323	George Kallio.	(No answer.)
	Edward Kaucic.	A. Here.
	Tony Kancilja.	(Not here.)
	Frank Musech.	A. Here.
	Angelo Galbavy.	A. Here.
	David Nostell.	(No answer.)
	Anton Nogode.	A. Here.
	Merritt Pratt.	A. Here.
	Robert Pratt.	A. Here.
	Andrew Rode.	A. Here.
	Alvar Rommppaine.	A. Here.
	Arvo Rommppaine.	A. Here.
	Peter Skarbalus.	(No answer.)
	Luther Small.	A. Here.

A Voice: Stanley Grum is in quarantine with scarlet fever.

Mr. Glaser: I understand one you called is sick.

The Court: There are 1, 2, 3, 4, 5, 6 that are not here. As to each person named in group 1, the Court finds each said person guilty and pronounces judgment against him as follows:

A money fine of $100. and in addition thereto that he be confined in the County Jail for the period of ten days, or until discharged according to law.

I don't know where we are going to take care of the rest of this group. Where can we have some more men, Mr. Sheriff?

The Bailiff: We can take these men into the side room.

The Court: All right. Take them into the jury room there.

324 Mr. Glaser: May I ask the court to let these defendants go on their own bail as they were before. They are all local people and they won't go away; until we can decide whether we will pay their fine or whether we decide to appeal.

Mr. Keele: Can we wait until we get all through?

The Court: In the second group of respondents, I place those men who, according to the evidence, acted as leaders or by their acts or words indicated a total disregard for the orders of this Court, the efforts of the duly constituted authorities to enforce such orders and the life and safety of the enforcement officers who were making such effort. By their words or acts and by their assumption of certain duties of leadership, they have definitely placed themselves among those who acted in flagrant disregard of the orders of this Court and the duly constituted authorities and the rights of the plaintiff. These men should receive heavier penalties than the men in Group 1. In this group I place the following respondents: As your names are called men come to the jury box over here.

Roy Brown
Lester Crump
R. E. DuBois
Harold Dreyer
John Kondrath
Herman Latz
Elsworth Peters
Joseph Richveis
Fred Yaeger
Frank Zelenik

The Court: Are there eleven men here?

Mr. Swerin: Peters is missing and I understand he is out of the county.

325 The Court: Elsworth Peters does not answer.

Mr. Swiren: I am told he is not in court.

The Court: There are ten here?

The Clerk: You have ten there.

The Court: As to each person allocated to Group 2, the Court finds each person therein named guilty and enters judgment against him as follows:

A money fine of $150.00 and in addition thereto that he

be confined in the county jail for 120 days, or until discharged according to law.

In the third group, I place two respondents, viz: Charles Warner and Carl Swanson. The court finds you guilty and pronounces judgment as follows against you:

A money fine of $300.00, and in addition thereto that you be confined in the county jail for 180 days or until discharged according to law.

These men, according to the evidence, were the leaders of the men in Buildings Nos. 5 and 3 respectively. These are the men who gave the orders and who in all respects assumed the duties and obligations of leadership of the men in their respective buildings. By their acts and deeds, they showed themselves to have a total flagrant and malicious disregard for the orders of this Court, the efforts of the law enforcement officers in carrying out those orders, for the life and safety of themselves, of the men in the building with them and of those who are attempting to dislodge them as well as the rights of the plaintiff. As wilful and persistent con-
326 temnors of the Court, they should receive severe penalties.

In the fourth group, I have placed those respondents who more than anyone else are responsible for these proceedings. They are the men who undoubtedly led, counseled and advised all of the other respondents. They were men of experience in the matters involved, in the events leading up to and connected with the acts for which the respondents are on trial.

It would appear from the evidence that these men easily might have prevented the acts of violence which have been so clearly shown by the evidence in this case. During the time that the men were in Buildings Nos. 3 and 5, these two men appeared almost daily and gave encouragement to the men in their wilful defiance of the orders of this court. The inference is clear that had these men chosen, they could have ended at once the contempt being committed against the court but they did not choose so to do. Instead, by their acts and words, they encouraged those men acting in defiance of the court and its orders to continue their defiance of the duly constituted authorities of Lake County, and upon them more than upon anyone else rests the responsibility for the regrettable acts that were committed by the respondents. These men were not employed in or about or by the Fansteel Company nor were they permanent residents of Lake County. They came to this vicinity only a short time before the events

complained of took place and ejected themselves voluntarily into the lives and work of the other respondents.
327 Throughout the period the men remained in the Fansteel Company's plants in defiance of the orders of this court, these men continually aided and abetted the other contemnors of this court. Their behavior and conduct indicates by far the most flagrant and virulent disregard of law and order and the efforts of the duly constituted authorities of this county to maintain law and order. Accordingly, they should be punished more severely than any of the other respondents. These men are: Meyer Adelman and Oakley Mills, and you, Meyer Adelman, the Court finds you guilty and pronounces judgment against you as follows:

That you pay to the clerk of this court, in this case, a money fine of $1,000.00, and in addition thereto that you be confined in the county jail of Lake County, Illinois, for a term of 240 days or until discharged according to law, and you, Oakley Mills, the Court finds guilty and it imposes on you a money fine of $500.00 and that in addition thereto that you be confined in the County Jail of Lake County, Illinois, for a period of 180 days or until discharged according to law.

In the fifth group, I place certain of the respondents who, according to the evidence, were in the plant unwillingly or at some time during the time that they were in the plant by their acts or words indicated a desire to withdraw and a disapproval of the acts of the men acting in disregard of the injunctional order. Such men, while they may have been technical contemnors of the Court, were obviously not acting in flagrant defiance of the Court orders. Some of these men
328 were men who entered the plant wrongfully but prior to the issuance of any injunction, and by their acts and words at a later date indicated that they were aware of the gravity of their acts and desired to quit the premises at the earliest possible moment or indicated by actions or words their disapproval of the acts of the more flagrant offenders. In this group are also men concerning whom no evidence of any kind has been introduced. Some of these men are entitled to a discharge. Others in this group may deserve some punishment but I would like to consider their cases further and continue them for the present. In this group, I place the following whose cases will be continued. I might say this group includes a long list, all of the other respondents whose names I have not already read off and pronounced judgment against. Those I want to study further and see whether I

shall pronounce any serious judgment against them. I have a great long list here. It is a list of hard names. I will hand this list to the clerk. Gentlemen, I have finished.

329 State of Illinois } ss.
County of Lake }

I, Albert P. McDermott, official reporter in and for the Circuit Court of Lake County, in the State of Illinois, Do Hereby Certify that the foregoing is a true and correct copy of the Opinion of the Court in the case of Fansteel Metallurgical Corporation, Plaintiff, *vs.* Lodge 66 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Respondents, Case Gen. No. 37551, in said Court, on the 8th day of June, A. D. 1937, and contained in the foregoing twenty-one typewritten pages.

Albert P. McDermott,
Official Reporter in and for the Circuit Court of Lake County, in the State of Illinois.

330 RESPONDENT EXHIBIT NO. 1.

6/10/37

IN THE CIRCUIT COURT OF LAKE COUNTY.

* * (Caption—37551) * *

ORDER.

This cause coming on to be heard upon the duly verified petition of Fansteel Metallurgical Corporation, a corporation duly organized and existing under the laws of the State of New York, Plaintiff in this cause, filed herein on the 18th day of February, 1937, for attachment to show cause why the respondents therein named should not be adjudged in contempt of this Court for the violation of the Injunctional Order entered by this Court in this cause on February 18, 1937 and the Writ of Injunction issued pursuant thereto and punished therefor, as alleged in said petition; and the duly verified petition of said Fansteel Metallurgical Corporation filed herein on February 25, 1937 for the attachment of the respondents,

Meyer Adelman and Oakley Mills (therein referred to as
331 John Doe Mills) to show cause why the said respondents therein named should not be adjudged in contempt of this Court for the violation of the aforesaid Injunctional Order and the Writ of Injunction issued pursuant thereto and punished therefor, as alleged in said petition; and the duly verified supplemental petition of said Fansteel Metallurgical Corporation filed herein, pursuant to leave of Court first had and obtained, on March 22, 1937 for a rule upon all of the respondents therein named to show cause why the said respondents therein named should not be adjudged in contempt of this Court for violation of the aforesaid Injunctional Order and the Writ of Injunction issued pursuant thereto and punished therefor, as alleged in said supplemental petition; and the affidavits filed by the Plaintiff herein in support of the said petitions and supplemental petition; and the rules to show cause issued by this Court in connection with said petitions and supplemental petition and all orders entered with respect thereto; and the answer of the respondents to the said petitions and supplemental petition;

And it appearing to the Court that the respondents named in said petitions and supplemental petition received due notice of said petitions and supplemental petition and filed their answer thereto, and appeared in open Court in person and by counsel from time to time upon the hearings upon said petitions and supplemental petition, and that said hearings were from time to time continued by order of this Court until the 2nd day of June, 1937;

And it further appearing to the Court that the hearing on said petitions and supplemental petition and the affidavits filed by the Plaintiff in support thereof, the rules to show cause issued in connection therewith and the answer of the respondents therein named thereto, and the matters and things
332 therein referred to, began on the 2nd day of June, 1937 and continued from day to day thereafter up to and including the 8th day of June, 1937;

And it further appearing to the Court that all of the respondents named in said petitions and supplemental petition were present in open Court in person and by counsel at each and all of the hearings held on said days;

And the Court having read and considered said petitions and supplemental petition, the affidavits filed in support thereof, the answer of the respondents therein named thereto, the testimony of witnesses sworn and examined in open Court on

behalf of said Fansteel Metallurgical Corporation and said respondents, and the documentary and other evidence offered and introduced by the respective parties, and the Court having heard the arguments of counsel for the Plaintiff and for the respondents hereinafter named and being advised in the premises, Finds as Follows:

1. This Court has jurisdiction of the subject matter hereof and of all parties plaintiff and defendant in this cause and of the following respondents: Wilbert Braden, Howard Bond, George Kallio, Merritt Pratt, Robert Pratt, Nick Benkovich, Lee Stanley, John Germer, Ralph Hoffman, Oscar Westerlund, A. Hanning, R. Ross, J. Kondrath, George Divine, Louis Bereczsky, Frank Latz, Frank Musech, Alvar Rommppaine, Ray Grossenheider, Edward Kaucic, Milton Coon, Victor Weatherhead, George Cerk, Herman Latz, Nate Mogel, Art Sladek, Steve Ark, Frank Renek, Joe Chudy, Peter Skarbalus, Mike Zelenik, Andrew Rode, R. DuBois, Joe Petraitis, Chester Hood, Frank Moxey, Cornelius Dugan, Theodore Ohlson, Casmir Petkus, Paul Wells, Gilbert Haney, Fred Hensley, Ed. Ruck, Eino Johnson, Alf Simonson, Tony Kancilja, 333 Wallace Bourdeau, Fred Karpinski, Elsworth Peters, Ted Christiansen, A. Anderson, Carl Swanson, Lester Crump, Charles Warner, Oscar Johnson, Art Holm, Jr., Frederick Yaeger, Alan White, Frank Ptak, Roy Brown, Jerome Camernik, Jr., Eugene Hendee, David Nostell, Vincent Dietmeyer, Andrew Bereczsky, Eric Schultz, Stanley Grum, Al. Bunton, William Van Treek, Harold Dreyer, John Plewa, Anton Nagode, Ed. Brunke, Luther Small, Frank Nickoley, Frank Scheuer, Leo Daluga, Ed. Schuman, Clarence Dreyer, Elmer Luke, Victor Hertel, John Praski, Victor Oliver, Charles Fulkerson, Sr., Gus Canelakes, Angelo Galbavy, Steve Luczo, Arvo Rommppaine, Frank Zelenik, Joseph Richveis, Oakley Mills and Meyer Adelman.

2. On the 17th day of February, 1937, at about the hour of 2:30 o'clock in the afternoon, cetrain buildings and properties of the Plaintiff, located in the City of North Chicago, Lake County and State of Illinois, were violently and unlawfully seized by certain of its employees without the consent of said Plaintiff, and the possession thereof withheld with force and arms from the Plaintiff.

3. Thereafter, on the same day, at the hour of 6:00 o'clock in the afternoon, the Plaintiff, through its duly authorized agents and representatives, demanded of said employees in possession of said buildings as aforesaid, the surrender of

said buildings and properties seized, held and occupied by said employees as aforesaid, and the said employees then and there refused to surrender said buildings to the Plaintiff or to comply with the said demand and remained in possession thereof as aforesaid. Thereupon and by reason thereof, that is to say, the refusal of the said employees to surrender the said buildings as aforesaid upon the request of the Plaintiff, the said Plaintiff, by its duly authorized agents, then and there discharged each and every one of said employees occupying said buildings, as aforesaid, from its employ and
334 then and there gave each and all of said employees due notice of their discharge.

4. Thereafter, on the 18th day of February, 1937 the Plaintiff duly filed its verified Complaint in this cause setting up the facts hereinbefore stated and made application to this Court for an Injunctional Order and Writ of Injunction which, after due hearing and consideration by the Court, was ordered and an Injunction Writ was issued on said 18th day of February, 1937, as more fully appears from the record in this cause.

5. The respondent, Meyer Adelman, was present in open Court at the time of the entry of said Injunctional Order by this Court on February 18, 1937 and had knowledge of the entry of said Injunctional Order and the provisions thereof.

6. All of the respondents named in Paragraph 1 hereof did, on the 18th day of February, 1937, receive and have notice and actual knowledge of the entry of said Injunctional Order by this Court on the 18th day of February 1937 and of the provisions thereof and of the Writ of Injunction issued pursuant thereto.

7. The following named respondents: Steve Ark, Ed. Brunke, Al. Bunton, Jerome Camernik, Jr., Gus Canelakes, Vincent Dietmeyer, Joe Chudy, Clarence Dreyer, Stanley Grum, Art Holm, Jr., George Kallio, Edward Kaucic, Tony Kancilja, Frank Musech, Angelo Galbavy, David Nostell, Anton Nagode, Merritt Pratt, Robert Pratt, Andrew Rode, Alvar Rommppaine, Arvo Rommppaine, Peter Skarbalus, Luther Small, Roy Brown, Lester Crump, R. E. DuBois, Harold Dreyer, John Kondrath, Herman Latz, Frank Latz, Els-
335 worth Peters, Joseph Richveis, Frank Yaeger, Frank Zelenik, Charles Warner and Carl Swanson, and each of them, was and is guilty of contempt of this Court for knowingly, wilfully and maliciously violating the Injunctional Order entered by this Court on February 18, 1937 and the Writ of Injunction issued pursuant thereto, in that they and each

of them, after said Injunctional Order was entered and after having received knowledge of said Injunctional Order and the contents thereof, did refuse to cease and desist from occupying and possessing that portion of the plants and properties of Fansteel Metallurgical Corporation located at North Chicago, Illinois, and from interfering with the Plaintiff's use and possession of such plants and properties, and refusing to vacate and remove from the said premises then occupied and possessed by them and deliver the same over to Fansteel Metallurgical Corporation, and in doing other acts and things, all as charged in the aforesaid petitions and supplemental petition hereinbefore described and referred to.

8. All of said respondents named in Paragraph 7 hereof, and each of them, have failed to show cause why they and each of them should not be punished for contempt of this Court for knowingly, wilfully, maliciously and unlawfully violating the said Injunctional Order entered herein on February 18, 1937 and the Writ of Injunction issued pursuant thereto.

9. Said contempt of the said respondents named in Paragraph 7 hereof tended to injure the rights and interests of said Fansteel Metallurgical Corporation, Plaintiff herein, and said contempt by the respondents thus named was calculated to, and did have the effect of, obstructing, impeding and thwarting the administration of justice and defying the process of this Court and did thereby tend to bring this Court into disrepute.

336 10. The respondents, Meyer Adelman and Oakley Mills, and each of them, after said Injunctional Order of February 18, 1937 was entered and the Writ of Injunction issued pursuant thereto and after they and each of them received actual notice and had knowledge of said Injunctional Order and the contents thereof, knowingly, wilfully, maliciously and unlawfully did violate said Injunctional Order so entered by this Court in this cause on February 18, 1937 and the Writ of Injunction issued pursuant thereto by aiding, assisting, abetting and facilitating the aforesaid respondents named in Paragraph 7 hereof in the wilful, malicious and unlawful violation of said Injunctional Order entered by this Court in this cause on said 18th day of February, 1937, and the Writ of Injunction issued pursuant thereto, all as charged in the aforesaid petitions and supplemental petition.

11. Said respondents, Meyer Adelman and Oakley Mills, and each of them, have failed to show cause why they and

each of them should not be adjudged in contempt of this Court for knowingly, wilfully, maliciously and unlawfully violating the said Injunctional Order of this Court entered herein on February 18, 1937, as aforesaid, and the Writ of Injunction issued on the same date pursuant thereto.

12. The contempt committed by said respondents, Meyer Adelman and Oakley Mills, tended to injure and impair the rights and interests of said Fansteel Metallurgical Corporation, Plaintiff herein, and the said contempt of the respondents, Meyer Adelman and Oakley Mills, and each of them, was calculated to, and did have the effect of, obstructing, impeding and thwarting the administration of justice and defying the process of this Court and of bringing this Court into disrepute.

13. It Is Therefore Ordered, Adjudged and Decreed 337 that the following respondents: Steve Ark, Ed. Brunke, Al. Bunton, Jerome Camernik, Jr., Gus Canelakes, Vincent Dietmeyer, Joe Chudy, Clarence Dreyer, Stanley Grum, Art Holm, Jr., George Kallio, Edward Kaucic, Tony Kancilja, Frank Musech, Angelo Galbavy, David Nostell, Anton Nagode, Merritt Pratt, Robert Pratt, Andrew Rode, Alvar Rommppaine, Arvo Rommppaine, Peter Skarbalus, Luther Small, Roy Brown, Lester Crump, R. E. DuBois, Harold Dreyer, John Kondrath, Herman Latz, Frank Latz, Elsworth Peters, Joseph Richveis, Fred Yaeger, Frank Zelenik, Charles Warner, Carl Swanson, Oakley Mills and Meyer Adelman, and each of them, be, and is hereby adjudicated and adjudged guilty of and in contempt of this Court.

14. It Is Further Ordered, Adjudged and Decreed that said rules to show cause heretofore issued against the respondents named in the preceding paragraph hereof be, and the same are hereby made absolute.

15. It Is Further Ordered, Adjudged and Decreed that the said respondent, Steve Ark pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court, and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

16. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue

of the authority of the People of the State of Illinois,
338 to carry forthwith this sentence into effect by seizing the body of the said respondent, Steve Ark, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

17. It Is Further Ordered, Adjudged and Decreed that the said respondent, Ed. Brunke, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

18. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Ed. Brunke, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

19. It Is Further Ordered, Adjudged and Decreed that the said respondent, Al. Bunton, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged
with contempt, as heretofore found by this Court, for the
339 period of ten (10) days, unless sooner discharged in due course of law.

20. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois, be and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Al. Bunton, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hun-

dred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

21. It Is Further Ordered, Adjudged and Decreed that the said respondent, Jerome Camernik, Jr., pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this court, for the period of ten (10) days, unless sooner discharged in due course of law.

22. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Jerome Camernik, Jr., and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

23. It Is Further Ordered, Adjudged and Decreed that the said respondent, Gus Canelakes, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court,
340 for the period of ten (10) days, unless sooner discharged in due course of law.

24. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Gus Canelakes, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

25. It Is Further Ordered, Adjudged and Decreed that the said respondent, Vincent Dietmeyer, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County

Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

26. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Vincent Dietmeyer, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

27. It Is Further Ordered, Adjudged and Decreed That the said respondent, Joe Chudy, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

341 28. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Joe Chudy, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

29. It Is Further Ordered, Adjudged and Decreed that the said respondent, Clarence Dreyer, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

30. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois,

be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Clarence Dreyer, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

31. It Is Further Ordered, Adjudged and Decreed that the said respondent, Stanley Grum, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain
342 charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

32. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Stanley Grum, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

33. It Is Further Ordered, Adjudged and Decreed that the said respondent, Art Holm, Jr., pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

34. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Art Holm, Jr., and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the

payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

35. It Is Further Ordered, Adjudged and Decreed that the said respondent, George Kallio, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due
343 course of law.

36. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, George Kallio, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

37. It Is Further Ordered, Adjudged and Decreed that the said respondent, Edward Kaucic, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

38. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Edward Kaucic, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

39. It Is Further Ordered, Adjudged and Decreed that the said respondent, Tony Kancilja, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition

thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

344 40. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Tony Kancilja, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

41. It Is Further Ordered, Adjudged and Decreed that the said respondent, Frank Musech, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

42. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois, be and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Frank Musech, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

43. It Is Further Ordered, Adjudged and Decreed that the said respondent, Angelo Galbavy, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court, and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

345 44. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of

Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Angelo Galbavy, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

45. It Is Further Ordered, Adjudged and Decreed that the said respondent, David Nostell, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

46. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, David Nostell, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

47. It Is Further Ordered, Adjudged and Decreed that the said respondent, Anton Nagode, pay a fine of One Hun-
346 dred Dollars ($100.00) to the Clerk of this Court, and in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

48. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Anton Nagode, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the

payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

49. It Is Further Ordered, Adjudged and Decreed that the said respondent, Merritt Pratt, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

50. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Merritt Pratt, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days
347 and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

51. It Is Further Ordered, Adjudged and Decreed that the said respondent, Robert Pratt, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

52. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Robert Pratt, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

53. It Is Further Ordered, Adjudged and Decreed that the said respondent, Andrew Rode, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition

thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

348 54. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Andrew Rode, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

55. It Is Further Ordered, Adjudged and Decreed that the said respondent, Alvar Rommppaine, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

56. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Alvar Rommppaine, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

349 57. It Is Further Ordered, Adjudged and Decreed that the said respondent, Arvo Rommppaine, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

58. It Is Further Ordered, Adjudged and Decreed that the

Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Arvo Rommppaine, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

59. It Is Further Ordered, Adjudged and Decreed that the said respondent, Peter Skarbalus, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

60. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the
350 body of the said respondent, Peter Skarbalus, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

61. It Is Further Ordered, Adjudged and Decreed that the said respondent, Luther Small, pay a fine of One Hundred Dollars ($100.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of ten (10) days, unless sooner discharged in due course of law.

62. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Luther Small, and him safely keep in the County Jail of the County of Lake, State of Illinois,

for and until the expiration of the period of ten (10) days and the payment by said respondent of the said fine of One Hundred Dollars ($100.00) to the Clerk of this Court, unless sooner discharged in due course of law.

63. It Is Further Ordered, Adjudged and Decreed that the said respondent, Roy Brown, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one Hundred and twenty (120) days, unless sooner discharged in due course of law.

351 64. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Roy Brown, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

65. It Is Further Ordered, Adjudged and Decreed that the said respondent, Lester Crump, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

66. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hreeby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Lester Crump, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

67. It Is Further Ordered, Adjudged and Decreed that the said respondent, R. E. DuBois, pay a fine of One Hundred

Fifty Dollars ($150.00) to the Clerk of this Court, and in
352 addition thereto, he be and is hereby committed to the
County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

68. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, R. E. DuBois and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

69. It Is Further Ordered, Adjudged and Decreed that the said respondent, Harold Dreyer, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

70. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Harold Dryer, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

71. It Is Further Ordered, Adjudged and Decreed that the said respondent, John Kondrath, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and,
in addition thereto, he be and is hereby committed to
353 the County Jail of the County of Lake, State of Illinois,
there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

72. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, John Kondrath, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

73. It Is Further Ordered, Adjudged and Decreed that the said respondent, Herman Latz, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

74. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Herman Latz, and him safely keep in the County Jail of the County of Lake, State of Illinois for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

75. It Is Further Ordered, Adjudged and Decreed that the said respondent, Frank Latz, pay a fine of One Hun-
354 dred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

76. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the

said respondent, Frank Latz, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

77. It Is Further Ordered, Adjudged and Decreed that the said respondent, Elsworth Peters, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

78. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Elsworth Peters, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said
355 respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

79. It Is Further Ordered, Adjudged and Decreed that the said respondent, Joseph Richveis, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

80. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Joseph Richveis, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars

($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

81. It Is Further Ordered, Adjudged and Decreed that the said respondent, Fred Yaeger, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

82. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illi-
356 nois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Fred Yaeger, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

83. It Is Further Ordered, Adjudged and Decreed that the said respondent, Frank Zelenik, pay a fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and twenty (120) days, unless sooner discharged in due course of law.

84. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Frank Zelenik, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and twenty (120) days and the payment by said respondent of the said fine of One Hundred Fifty Dollars ($150.00) to the Clerk of this Court, unless sooner discharged in due course of law.

85. It Is Further Ordered, Adjudged and Decreed that the said respondent, Charles Warner, pay a fine of Three

Hundred Dollars ($300.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the
357 County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and eighty (180) days, unless sooner discharged in due course of law.

86. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Charles Warner, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and eighty (180) days and the payment by said respondent of the said fine of Three Hundred Dollars ($300.00) to the Clerk of this Court, unless sooner discharged in due course of law.

87. It Is Further Ordered, Adjudged and Decreed that the said respondent, Carl Swanson, pay a fine of Three Hundred Dollars ($300.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of one hundred and eighty (180) days, unless sooner discharged in due course of law.

88. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Carl Swanson, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and eighty (180) days and the payment by said respondent of the said fine of Three Hundred Dollars
358 ($300.00) to the Clerk of this Court, unless sooner discharged in due course of law.

89. It Is Further Ordered, Adjudged and Decreed that the said respondent, Oakley Mills, pay a fine of Five Hundred Dollars ($500.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for

the period of one hundred and eighty (180) days, unless sooner discharged in due course of law.

90. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Oakley Mills, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of one hundred and eighty (180) days and the payment by said respondent of the said fine of Five Hundred Dollars ($500.00) to the Clerk of this Court, unless sooner discharged in due course of law.

91. It Is Further Ordered, Adjudged and Decreed that the said respondent, Meyer Adelman, pay a fine of One Thousand Dollars ($1,000.00) to the Clerk of this Court and, in addition thereto, he be and is hereby committed to the County Jail of the County of Lake, State of Illinois, there to remain charged with contempt, as heretofore found by this Court, for the period of two hundred and forty (240) days, unless sooner discharged in due course of law.

92. It Is Further Ordered, Adjudged and Decreed that the Sheriff in and for said County of Lake and State of Illinois be, and he is hereby commanded, in the name and by
359 virtue of the authority of the People of the State of Illinois, to carry forthwith this sentence into effect by seizing the body of the said respondent, Meyer Adelman, and him safely keep in the County Jail of the County of Lake, State of Illinois, for and until the expiration of the period of two hundred and forty (240) days and the payment by said respondent of the said fine of One Thousand Dollars ($1,000.00) to the Clerk of this Court, unless sooner discharged in due course of law.

93. It Is Further Ordered, Adjudged and Decreed that the hearings as to the remaining respondents, as hereinafter named, shall stand continued until the further order of the Court: A. Anderson, Nick Benkovich, Andrew Bereczsky, Louis Bereczsky, Wallace Bourdeau, Wilbert Braden, Howard Bond, George Cerk, Ted Christiansen, Milton Coon, Leo Daluga, George Devine, Cornelius Dugan, Charles Fulkerson, Sr., John Germer, Fred Hensley, Eugene Hendee, Chester Hook, Gilbert Haney, Ralph Hoffman, A. Henning, Victor Hertel, Eino Johnson, Oscar Johnson, Elmer Luke, Steve

Luke, Steve Luczo, Fred Karpinski, Frank Moxey, Frank Nickoley, Theodore Ohlson, Victor Oliver, John Plewa, Frank Ptak, Joe Petraitis, Casmir Petkus, John Praski, Reginald Ross, Ed. Ruck, Frank Renek, Eric Schultz, Alf Simonson, Arthur Sladek, Milton Sladek, George Smith, Ed. Schuman, Frank Scheuer, Lee Stanley, William VanTreek, Victor Weatherhead, Paul Wells, Allen White, Oscar Westerlund and Mike Zelenik.

Entered at Waukegan, Illinois, this 8th day of June, 1937.

Theodore Forby,
Judge.

Endorsed: "Filed Jun. 8 '37 L. J. Wilmot, Clerk."

360 State of Illinois } ss.
Lake County }

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete Copy of the Judgment Order filed and entered of record in said Court on the 8th day of June A. D. 1937 in a certain cause now pending in said Court on the Chancery Side thereof wherein Fansteel Metallurgical Corporation, a New York Corporation, is Plaintiff and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al. are Defendants, Gen. No. 37551.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County, this 16th day of June, A. D. 1937.

L. J. Wilmot,
Clerk.

(Seal)

361 **RESPONDENT EXHIBIT NO. 2.**

6/10/37.

IN THE CIRCUIT COURT OF LAKE COUNTY.

* * (Caption—37551) * * *

FINAL DECREE.

This day comes the Plaintiff, Fansteel Metallurgical Corporation, a New York corporation, by Levinson Becker Peebles & Swiren and Sidney H. Block, its solicitors, and come also the Defendants, Lodge 66 of The Amalgamated Association of Iron, Steel and Tin Workers of North America, the Steel Workers Organizing Committee of the Committee for Industrial Organization, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark,

William Van Treek, Alexander Bunton, Stanley Grum,
362 Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer and John Taylor, by Paul P. Glaser and Lester F. Collins, their solicitors;

And It Appearing to the Court and the Court Finding:

1. That on February 18, 1937, the Plaintiff, a New York corporation, having its place of business in North Chicago, County of Lake and State of Illinois, filed its verified Bill of Complaint alleging that the Defendants, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, The Steel Workers Organizing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary

Roe, et al., their members and agents, had unlawfully seized, taken and then held possession of the plants and properties of the Plaintiff located at North Chicago, Lake County, Illinois, and that said Defendants had unlawfully and with
363 force and arms evicted from the said premises certain of the officers, agents and lawful representatives of the Plaintiff and had barricaded themselves within certain of the plants and buildings on the Plaintiff's premises and had refused admittance to the officers, employees and legal representatives of the Plaintiff; that the aforesaid unlawful action had been taken in pursuance of an unlawful and malicious conspiracy between the Defendants for the malevolent purpose of injuring and destroying the Plaintiff's business; that those Defendants who had barricaded themselves within said properties were the former employees of the Plaintiff who had been discharged subsequent to their forcible and unlawful seizure of the plant and that they had seized and were withholding possession of the plant from the lawful owners without justification in law and had refused to comply with the request of the Plaintiff that it be restored to the possession of its properties.

2. That the Defendants, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, The Steel Workers Organizing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick
364 Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer and John Taylor did, on the 18th day of February, 1937, file their appearance in this cause by Joseph M. Jacobs and submitted to the jurisdiction of this Court.

3. That thereafter, on February 18, 1937, an order was entered by this Court, after a hearing upon the aforesaid verified Bill of Complaint, ordering and directing the Defendants, their members and agents, to immediately cease and desist from occupying the plants or properties of the Plaintiff and from interfering with the Plaintiff's use and possession of such plants and properties; to immediately surrender to the

Plaintiff all goods, wares, merchandise, equipment and other property of the Plaintiff then held or in the possession of the Defendants; to vacate said premises then held and occupied by them without damage or injury to said premises or properties or any of the machinery or equipment or appurtenances therein contained; to cease and desist from unlawfully interfering with any of the plants, properties, machinery and equipment of the Plaintiff and from continuing to trespass upon any of the plants, properties, machinery and equipment of the Plaintiff; to cease, desist and refrain from in any manner unlawfully interfering with the free access of the officers, agents and employees of the Plaintiff to the Plaintiff's property and to desist and refrain from in any manner unlawfully interfering with the operation of the plants or properties of the Plaintiff. Said order further provided that the aforesaid Injunctional Order should become effective immediately upon
the approval by the Court and the filing of a penal bond
365 in the sum of Twenty-Five Hundred Dollars ($2500.00)
as good and sufficient security; that such a bond was approved by the Court and filed herein on the 18th day of February, 1937, and that thereupon said Injunctional Order was in full force and effect and has so continued until the present time and is still in force and effect.

4. That thereafter, on the 28th day of February, 1937, the Plaintiff filed a Petition and Supplemental Complaint, supported by affidavits and documentary proof, praying for additional and supplemental relief, which was granted by this Court in an Injunctional Order entered on March 1, 1937.

5. That each of said Defendants have heretofore filed answers to the Complaint, the Petition and Supplemental Complaint and the various Rules to Show Cause, which have been entered herein.

And This Cause Coming on to Be Heard upon the Complaint and the Petition and Supplemental Complaint herein of Fansteel Metallurgical Corporation, and the joint and several answers thereto of each and all of the Defendants herein, and the proofs, oral, documentary and written, heard and received in open Court upon the hearing of said cause, and after arguments by counsel for the respective parties, and the Court being fully advised in the premises,

Doth Further Find:

366 6. This Court has jurisdiction of the subject matter of this cause and of all of the parties hereto.

7. The Plaintiff is a corporation duly organized and exist-

ing under the laws of the State of New York and authorized and licensed to do business in the State of Illinois; that it is engaged, in the State of Illinois, in the refinement, manufacture and sale of rare metals and chemical compounds of metals.

8. The principal plant and offices of the Plaintiff are located at North Chicago, Illinois, in Lake County, occupying seven and one-half acres, extending along 22nd Street between the Chicago, North Shore & Milwaukee Railroad tracks and Commonwealth Avenue.

9. During the period from on or about September 10, 1936 to the date of the entry of this Decree, said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, by and through its agents, servants and members, continued a systematic campaign of coercion and intimidation directed against the employees of the Plaintiff in an effort to compel them to join and become members of the said Lodge 66; that the servants, agents and members of said Lodge 66 individually and in groups made repeated calls at the homes of the employees of the Plaintiff and by threats of physical violence, reprisals and social ostracism sought
367 to compel them to become members of the said Lodge 66; said Lodge 66 represented to the employees of the Plaintiff that unless they joined the union forthwith they would, upon the completion of the union organization, either be ousted from their jobs or subjected to large fines or initiation fees in amounts varying from $25.00 to $150.00 for each employee as a condition of being allowed to continue in the employ of Plaintiff.

10. At or about 2:30 o'clock in the afternoon on February 17, 1937, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treck, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christian, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, Wilbert Braden, Howard Bond, Geo. Kallic, Merritt Pratt, Nick Benkovich, Lee Stanley, Ralph Huffman, Oscar Westerlund, Albert Henning, G. Divine, L. Bereszky, Frank Musech, Alvan Romppaine, Ray Grossenheider, Ed. Kaucic, Milton Coon, Victor Weatherhead, George Cerk, Her-

man Latz, Nate Mogel, Art Sladek, Frank Renek, Joseph Chudy, Pete Skarbalus, Mike Zelenik, Andrew Rode, Joe Petraitis, Chester Hood, Frank Moxey, Cornelius Dugan, Theodore Ohlson, Casmir Petkus, Paul Wells, Gilbert Haney,
368 Eino Johnson, Alf. Simonson, Tony Kancilja, Wallace Bourdeau, Fred Kaprinski, Alan White, Frank Ptak, Andrew Bereczky, Eric Shultz, John Plewa, Anton Nagode, Ed. Brunke, Luther Small, Frank Nickoley, Frank Scheuer, Leo Daluga, Ed. Schuman, Clarence Dreyer, Elmer Luke, Victor Hertel, John Praski, V. Oliver, Charles Fulkerson, Gus Ganelakes, Steve Luczo, Arvo Romppaine, Joe Richveis, John Cudith, Jr., Frank Furlan, Phil Graimer, John Grom, Joe Lima, Paul Makovec, George Mondro, George Smith, Joseph Aigner, John Jackaway, Eric Lindberg, Stanley Janas, Chester Janas, Frank Ludlow, Frank Osenek, Milton Sladek, Orlin Swanson, Charles Smith and Stanley Verenski, acting in pursuance of a conspiracy between themselves, certain other members of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Meyer Adelman, the regional director of the Steel Workers Organizing Committee of the Committee for Industrial Organization, and Van A. Bittner, an officer and agent of the said Steel Workers Organizing Committee of the Committee for Industrial Organization, forcibly seized and possessed Buildings Nos. 3 and 5 of the Plaintiff located as aforesaid at North Chicago, Illinois. The said Defendants forcibly evicted from each of said buildings certain of the officers, agents and representatives of the Plaintiff and those employees who desired to continue with their work, and barricated themselves within the buildings.

369 11. Thereafter, at or about 4:00 o'clock in the afternoon on February 17, 1937, the Plaintiff called upon the Defendants and all other persons who had so forcibly seized and occupied Plaintiff's premises, to evacuate the premises and the Defendants and the other persons in possession of the Plaintiff's plants having refused this demand, Plaintiff thereupon discharged from its employ, for such unlawful and violent seizure of the Plaintiff's property and plants, each of the Defendants and each of the other persons in possession of Plaintiff's premises.

12. Thereafter, from approximately 2:30 o'clock in the afternoon on February 17, 1937, the said Defendants, together with Wilbert Braden, Howard Bond, Geo. Kallic, Merritt Pratt, Nick Benkovich, Lee Stanley, Ralph Huffman, Oscar

Westerlund, Albert Henning, G. Divine, L. Bereszky, Frank Musech, Alvan Romppaine, Ray Grossenheider, Ed. Kaucic, Milton Coon, Victor Weatherhead, George Cerk, Herman Latz, Nate Mogal, Art Sladek, Frank Renek, Joseph Chudy, Pete Skarbalus, Mike Zelenik, Andrew Rode, Joe Petraitis, Chester Hood, Frank Moxey, Cornelius Dugan, Theodore Ohlson, Casmir Petkus, Paul Wells, Gilbert Haney, Eino Johnson, Alf. Simonson, Tony Kancilja, Wallace Bourdeau, Fred Kaprinski, Alan White, Frank Ptak, Andrew Bereczky, Eric Shultz, John Plewa, Anton Nagode, Ed Brunke, Luther Small,
Frank Nickoley, Frank Scheuer, Leo Daluga, Ed. Schu-
370 man, Clarence Dreyer, Elmer Luke, Victor Hertel, John
Praski, V. Oliver, Charles Fulkerson, Gus Genelakes, Steve Luczo, Arvo Romppaine, Joe Richveis, John Cudith, Jr., Frank Furlan, Phil Graimer, John Grom, Joe Lima, Paul Makovec, George Mondro, George Smith, Joseph Aigner, John Jackaway, Eric Lindberg, Stanley Janas, Chester Janas, Frank Ludlow, Frank Osenek, Milton Sladek, Orlin Swanson, Charles Smith and Stanley Verenski, who were also members, servants or agents of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, continuously and unlawfully kept and retained possession of said Buildings Nos. 3 and 5 until at or about the hour of 6:00 o'clock in the forenoon on February 26, 1937.

13. Pursuant to the Injunctional Order entered as aforesaid on February 18, 1937, a Writ of Injunction duly issued from and under the seal of this Court and, as appears from the return of said Writ, on the 18th day of February, 1937, at approximately 1:00 o'clock in the afternoon, Lawrence A. Doolittle, the duly constituted Sheriff of Lake County, Illinois, served the Writ of Injunction upon all of the Defendants and their members and agents who were occupying and in possession of the plant and properties of the Plaintiff. Entrance to the said Buildings Nos. 3 and 5 occupied by the said persons was denied and refused to the Sheriff who thereupon made service of the Writ of Injunction by reading the same to the said persons in a loud voice through the open windows,
by delivering a copy thereof to Carl Swanson, one of the
371 Defendants herein and the Secretary and Treasurer of
Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and by distributing approximately 25 copies of the said Writ of Injunction to various individual Defendants, members of said Lodge 66, and their agents who were then in occupation of the said prem-

ises, and by posting in conspicuous places upon the properties and plant of the Plaintiff copies of the aforesaid Writ of Injunction.

14. On receiving service of the Writ of Injunction, said Carl Swanson, speaking for himself and said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and the other persons occupying the properties and plant of the Plaintiff, announced and stated to the Sheriff that they would refuse and continue to refuse to comply with the Writ of Injunction and the order of this Court and that they would not vacate or remove from the properties and plant of the Plaintiff.

15. That each and all of the Defendants and each and all of the persons listed and named in Paragraphs 10 and 12 hereof as having unlawfully occupied and retained possession of the Plaintiff's plants and properties, received full knowledge of the entry by this Court of the aforesaid Order and received full knowledge of the Writ of Injunction issued pursuant thereto, from and under the seal of this Court, and of the terms and provisions thereof, through the aforesaid service of said Writ of Injunction by the Sheriff of Lake County, Illinois, in the manner aforesaid. Notwithstanding such full knowledge of the entry of the said Order and the issuance
372 of the Writ of Injunction, each of the Defendants and each of the persons listed in Paragraphs 10 and 12 hereof deliberately and knowingly violated the provisions of the said Injunctional Order and Writ of Injunction.

16. That thereafter, on the aforesaid 18th day of February, 1937, the Plaintiff filed in this cause a verified petition for the attachment of certain of the aforesaid persons to show cause why they should not be punished for contempt.

17. That thereafter, on the said 18th day of February, 1937, an order was entered by this Court directing and commanding the Sheriff of Lake County, Illinois, and each and all of his duly constituted deputies, to forthwith seize and attach the bodies of all persons occupying the properties or plant of the Plaintiff at North Chicago, Illinois, contrary to, and in violation of, the aforesaid Injunctional Order, and to forthwith bring said persons before the bar of this Court to show cause, if any they had, why they should not be held in contempt of this Court for violation of said Injunctional Order and Writ of Injunction issued pursuant thereto.

18. That pursuant to said Order of this Court, a Writ of Attachment duly issued from and under the seal of this Court

on the 18th day of February, 1937, ordering and directing the Sheriff and his deputies to bring the bodies of all persons occupying the properties and plant of the Plaintiff at North Chicago, Illinois, in violation of the aforesaid Injunctional
373 Order of this Court and the Writ of Injunction issued pursuant thereto, before the bar of this Court to show cause, if any they had, why they should not be adjudged in contempt of this Court for the violation of said Injunctional Order and the Writ of Injunction issued pursuant thereto.

19. That on the morning of February 19, 1937, Lawrence A. Doolittle, the duly constituted and acting Sheriff of Lake County, Illinois, proceeded to the aforesaid premises with the aforesaid Writ of Attachment for the purpose of executing said Writ by seizing and attaching the bodies of all those persons occupying and holding the premises of the Plaintiff in violation of the aforesaid Injunctional Order of this Court and the Writ of Injunction issued pursuant thereto, and bringing the same before the bar of this Court; that the said Sheriff was accompanied by approximately 125 deputies; that upon reaching the aforesaid premises, the said sheriff approached the buildings occupied by the persons named herein and demanded entrance to said buildings; that the Defendants denied the Sheriff and his deputies entrance to said buildings and that thereupon the Sheriff read, in a loud voice, the aforesaid Writ of Attachment to the Defendants through the open windows of the buildings occupied by them, and demanded that they forthwith leave said buildings and submit to arrest; that the Defendants refused to vacate said buildings or to submit to arrest by the Sheriff and thereupon closed said windows in the face of said Sheriff and barricaded themselves within said buildings; that immediately thereafter, the Sheriff and his deputies attempted to gain entrance to said buildings and to execute said Writ of Attachment by arresting the
374 persons within said buildings; that thereupon, the persons hereinbefore named hurled acid, bottles, pieces of metal, rocks and other missiles at the Sheriff and his deputies and contrived to turn fire extinguishers and fire hose upon the Sheriff and his deputies and threatened the Sheriff and his deputies with bodily harm and violence if they continued their efforts to execute the aforesaid Writ of Injunction and Writ of Attachment; that the aforesaid Defendants and persons herein named used, toward the Sheriff and his deputies, vile, indecent and profane language and made violent and abusive threats, all of which tended to bring this Court and

the enforcement officers of this County into disrepute and constituted a defiance of this Court and its orders and of the duly constituted authorities engaged in the enforcement of such orders; that because of the aforesaid malicious acts of the Defendants herein named in hurling acid, bottles and other missiles upon the Sheriff and his deputies, the latter were compelled to resort to the use of tear gas in an effort to carry out the orders of this Court; that the aforesaid Defendants continued to repel, with force and violence and the throwing of missiles, all efforts of the Sheriff and his deputies to execute the orders of this Court for a period of more than two hours, and that as a consequence of such resistance and violence, the Sheriff and his deputies were compelled to abandon their efforts to execute the aforesaid orders of this Court.

20. That from said 19th day of February, 1937, until the 26th day of February, 1937, the aforesaid Defendants, 375 or certain of them, continuously remained in the aforesaid premises in violation of the Injunctional Order, the Writ of Injunction issued pursuant thereto and the Writ of Attachment duly issued out of this Court; that during said time, said Defendants continued to refuse to evacuate said building and repeatedly stated that they would remain in possession of the aforesaid premises until such time as the Plaintiff met their demands regardless of the orders of this Court or the efforts of the duly constituted authorities of Lake County to carry out said orders; that during said period, said Meyer Adelman and one Oakley Mills, who is a member and agent of the Defendant, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and who had previously and during said period continued to maliciously, wilfully and unlawfully conspire, confederate and combine with the aforesaid Defendants to procure the forceful, violent and unlawful seizure of the Plaintiff's plants and properties, and to interfere with and prevent the Plaintiff from operating and continuing its regular and normal business operations, and to prevent, bar and interfere with the free and normal access of the Plaintiff, its officers and employees, to the plant and properties of the Plaintiff, and to coerce and intimidate by threats and other unlawful means various employees of the Plaintiff in order to compel them to join and pay dues to Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of

North America, appeared on numerous occasions on the property contiguous and adjacent to the buildings occupied by the aforesaid Defendants, and then and there encouraged, counseled and advised the aforesaid Defendants to remain in possession of the aforesaid premises and to repulse all
376 efforts of the duly constituted authorities of Lake County to evacuate said premises, all in violation of the Injunctional Order of this Court, the Writ of Injunction issued pursuant thereto and the aforesaid Writ of Attachment; that the said Meyer Adelman and Oakley Mills assisted in the procuring and delivery of food, bedding, stoves and other supplies to the aforesaid Defendants.

21. That on the 26th day of February, 1937, the Sheriff of Lake County, accompanied by approximately 50 deputies again attempted to execute the aforesaid Writ of Injunction and Writ of Attachment; that when the Sheriff and his deputies approached the buildings for the purpose of executing said Writs, the aforementioned Defendants, or certain of them, again hurled acid, bottles, rocks, pieces of metal and other dangerous and death-dealing missiles upon the Sheriff and his deputies from the windows of the building occupied by the aforesaid Defendants; that one of the deputies received a dangerous wound from one of the missiles so thrown, and numerous other deputies received divers wounds, bruises and abrasions from the missiles thrown as aforesaid; that the persons and clothing of some of the deputies were severely burned by acid thrown by the aforesaid Defendants, or certain of them, and that the lives of the Sheriff and all of his deputies were endangered by the aforesaid acts of violence of the aforesaid Defendants; that because of the aforesaid actions of the Defendants, the Sheriff and his deputies were again compelled to use tear and emetic gas to evacuate said buildings and that, after a period of some two hours, during which the aforementioned Defendants continued to
377 repulse the Sheriff and his deputies in their efforts to execute the orders of this Court, the Defendants deserted and evacuated said buildings; that during the efforts of the Sheriff and his deputies to carry out the orders of this Court on the 19th day of February, 1937, and again on the 26th day of February, 1937, the said Meyer Adelman and Oakley Mills appeared outside the fence of the Plaintiff's property at a point contiguous and adjacent to the buildings occupied by the aforesaid Defendants, and counseled the aforesaid

Defendants to continue their resistance to the Sheriff and his deputies and commanded, ordered and directed the Sheriff and his deputies to desist from their efforts to carry out the orders of this Court and threatened the Sheriff and his deputies with vile, indecent, opprobrious and abusive language, and that said Oakley Mills repeatedly threatened personal violence against the persons of certain deputy sheriffs then engaged in carrying out the orders of this Court, all of which tended to bring this Court and the enforcement officers of Lake County into disrepute.

22. That the said Meyer Adelman was present in open Court when the aforesaid Injunctional Order was announced and entered by this Court, and that both the said Meyer Adelman and Oakley Mills have heretofore had full knowledge and notice of the entry of said Injunctional Order and the issuance of said Writs of Injunction and Attachment; that the said Meyer Adelman and Oakley Mills, notwithstanding such knowledge and notice of said Injunctional Order and Writ of Injunction and Writ of Attachment, for
378 the purpose of irreparably injuring and destroying the business of the Plaintiff and for the purpose of bringing this Court and the enforcement officers of Lake County into disrepute, advised, counseled and directed the aforementioned Defendants to disregard and violate the aforesaid Injunctional Order and the Writs of Injunction and Attachment issued by this Court and to continue their unlawful acts and conduct in contempt of this Court and its order and Writs of Injunction and Attachment, and that the said Meyer Adelman and Oakley Mills repeatedly encouraged, aided, abetted and facilitated the unlawful retention of the plant and properties of the Plaintiff, in violation and disregard of the Injunctional Order and Writs of Injunction and Attachment issued out of this Court, by the aforementioned Defendants by supervising and directing their conduct and by furnishing food, supplies and equipment to said Defendants while said Defendants continued in the unlawful possession of Plaintiff's property.

23. During the period in which the said Buildings Nos. 3 and 5 were forcibly occupied in violation of the Writ of Injunction of this Court, the following persons, among others, left said buildings voluntarily or escaped therefrom: Otto Latz, Ray Grossenheider, Geo. Cerk, Allen White, Fred Ludlow, Howard Bond, Gilbert Haney, Milton Coon, Oscar West-

erlund, Victor Oliver, Frank Osenek, Albert Henning, Fred Hensley, Eric Schultz, John Praski, Olaf Simonson, Chester Hook, Erick Lindberg and John Plewa.

379 24. Thereafter, the Defendants and their members, agents and sympathizers, conspired and confederated together to interfere with the Plaintiff, its officers, employees and duly authorized representatives, in their conduct, control and direction of the Plaintiff's business and the use and occupation of the Plaintiff's plants and properties., In pursuance of such conspiracy, the Defendants caused large numbers of people, aggregating frequently as many as three thousand, to mass and congregate from day to day at the gates leading into, and alongside the fence surrounding, the Plaintiff's plant at North Chicago, Illinois, for the purpose of obstructing, hindering, interfering with and disturbing the Plaintiff and its officers, employees, agents and duly authorized representatives in the conduct, direction and control of the Plaintiff's business. The mobs which were so congregated injured and disarmed deputies stationed by the Sheriff of Lake County, Illinois at the premises to preserve and protect the property of the Plaintiff, and engaged in mass picketing for the purpose of coercing, intimidating and preventing the employees, officers, agents and duly authorized representatives of the Plaintiff from continuing in their employment and discharging and carrying out the duties of their employment.

25. For more than eight days prior to March 1, 1937, the Defendants and their members, agents and sympathizers, gathered and congregated in large numbers upon or

380 about the sidewalks, streets, private streets, alleys or approaches adjoining and adjacent to the premises occupied by the Plaintiff and the fences surrounding the same and the gates entrances and approaches thereto, and engaged in the following unlawful activities, to-wit: (a) intimidating, annoying and injuring the officers, employees, agents and representatives of the Plaintiff and obstructing, hindering, interfering and disturbing them in the rendition of their services and the discharge of their duties; (b) intimidating, threatening, coercing and unlawfully persuading Plaintiff's officers, employees, agents and representatives to discontinue their employment and cease carrying on their duties and employment; (c) engaging in mass picketing at the places aforesaid and along the ways traveled by the employees to and from work; and (d) by threats, jeers, violent and abusive

language, violence and threats of violence, taunts, entreaties and malicious arguments and other similar acts, preventing or attempting to prevent the officers, agents, representatives and other duly authorized persons of the Plaintiff from entering upon or continuing in their duties as such officers, employees, representatives or agents.

26. Thereafter, upon the verified Petition and Supplemental Complaint of the Plaintiff, this Court entered an Injunctional Order on the 1st day of March, 1937, ordering and directing that Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, The Steel Workers Organizing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred
381 Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary Roe, et al., and all of their officers, attorneys, servants, agents, associates, members and employees and all persons acting in aid of or in conjunction or sympathy with them, do absolutely desist and refrain from engaging in mass picketing and other unlawful activities specified in the Injunctional Order of this Court.

27. That thereafter, notwithstanding the said Injunctional Order of this Court, the Defendants, their members, servants and agents, continued a systematical campaign of coercion and harassment of the employees of the Plaintiff; visited such employees at their homes and threatened them with physical violence if they continued to work for the Plaintiff; in many instances hurled bricks and other missiles through the windows of the homes of the employees of the Plaintiff and otherwise sought, illegally and unlawfully, in violation of said Injunctional Order, to prevent the employees of the Plaintiff from continuing in their employment and discharging their duties as employees, agents and representatives of the Plaintiff.

382 28. The Defendants and their members, agents and sympathizers have further threatened and will, unless they are permanently restrained by this Court, continue their

intimidation and coercion of the employees, agents and representatives of the Plaintiff by accosting, obstructing and stopping them and calling upon them at their homes and elsewhere for the purpose of maliciously intimidating, threatening, coercing and unlawfully persuading them to cease and refuse to perform their duties as employees, agents and representatives of the Plaintiff and to join and become a member of, and pay dues to, said Defendant, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

29. Plaintiff would have sustained irreparable injury and damage had not this Court entered its temporary Injunctional Order on February 18, 1937 and its further Injunctional Order on March 1, 1937; Plaintiff will sustain irreparable damage and injury unless the provisions of both of said Injunctional Orders are made permanent by this Decree.

It Is Therefore Ordered, Adjudged and Decreed that Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, The Steel Workers Organizing Committee of the Committee for Industrial Organization, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck,
Fred Hensley, Harold Dreyer (sometimes known as Gus
383 Dreyer), Charles Swanson, Charles Warner, Angelo
Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary Roe, et al, and the persons before mentioned, and each and every one of them, and all of their officers, attorneys, servants, agents, associates, members and employees, and all persons acting in aid of or in conjunction or sympathy with them be, and they are hereby permanently and perpetually restrained and enjoined from:

(1) Occupying or possessing any portion of the plants or properties of the Plaintiff located at North Chicago, Illinois, and from interfering with the Plaintiff's use and possession of all such plants and properties;

(2) Interfering with any of the plants, properties, machinery or equipment of the Plaintiff or the Plaintiff's proper use and enjoyment thereof, or from trespassing upon any of

the plants, property, machinery or equipment of the Plaintiff;

(3) Congregating upon or about the sidewalks, streets, private streets, alleys or approaches adjoining and ad-
384 jacent to the premises occupied by the Plaintiff, or the fences surrounding the same, for the purpose of intimidating, annoying or injuring the officers, agents, representatives or employees of the Plaintiff, or for the purpose of unlawfully obstructing, hindering, interfering with or disturbing them, or any of them, in rendering their services and discharging their duties;

(4) Engaging, directing or procuring others to engage in the practice commonly known as picketing, that is to say, assembling or causing to be assembled numbers of members of said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, or other Defendants or others in sympathy with them, in the vicinity where the employees of the Plaintiff or any of them are required to work and perform their duties, at or near the places of ingress or egress or along the ways traveled by said employees thereto or therefrom, or by threats, jeers, violent or abusive language, violence or threats of violence, taunts, or by any similar acts preventing or attempting to prevent any of the employees, agents, representatives or other duly authorized persons of the Plaintiff from entering upon, or continuing in, their duties as such employees, representatives or agents;

(5) Either singly or in combination with others collecting in or about the approaches to the plants, factories and
385 places of business of the Plaintiff for the purpose of picketing or patrolling or guarding the streets, alleys, passageways, entrances, gates, approaches or places of business of the Plaintiff for the purpose of intimidating, threatening, coercing or unlawfully persuading any of the Plaintiff's officers, representatives, agents or employees not to enter upon or to cease carrying on their duties and employment, or for the purpose of intimidating, threatening, coercing or unlawfully persuading or preventing persons seeking employment from making application therefor or going to or from the offices, plant or premises of the Plaintiff;

(6) Either singly or in combination with others collecting in or about the approaches to the plants, factories and places of business of the Plaintiff for the purpose of picketing or

patrolling or guarding the streets, alleys, passageways, entrances, gates, approaches or places of business of the Plaintiff for the malevolent purpose of injuring the Plaintiff or injuring or destroying the Plaintiff's business or unlawfully interfering with its conduct, maintenance or operation;

(7) Either singly or in combination with others calling upon, or accosting, obstructing or stopping any of the officers, employees, agents or representatives of the Plaintiff or persons seeking employment with the Plaintiff at their homes
386 or anywhere else for the purpose of intimidating, threatening, coercing or unlawfully persuading them or any of them to cease or refuse to perform his or their duties as employee, officer or representative of the Plaintiff, or to leave or not to enter the employment or service of the Plaintiff, or to join or become a member of any of the defendant organizations;

(8) From entering or going upon the premises of the Plaintiff without the express consent or authorization of the Plaintiff;

provided, however, that nothing contained in this Final Decree shall be construed to prohibit the Defendants from posting one or two pickets or representatives at or near each point of ingress or egress to and from the plant of the Plaintiff or at any other points in Lake County, Illinois, not less than 300 feet apart, along the routes followed by the employees of the Plaintiff in going to and from their homes and to and from the place of business of the Plaintiff, with the express right to such pickets or representatives of observation, communication and persuasion either while stopping or while walking up and down, but such representatives and pickets are especially admonished that their communications, arguments and appeals shall not be abusive, malicious or threatening and that they shall not, in their efforts of communication or per-
387 suasion, follow or obstruct any unwilling listener.

It Is Further Ordered, Adjudged and Decreed that nothing contained in this Final Decree shall affect the validity of the Injunctional Order heretofore entered in this cause on February 18, 1937 and the Injunctional Order entered herein on March 1, 1937, and nothing herein contained shall affect any proceeding which has heretofore been instituted or may hereafter be instituted for the purpose of punishing, for contempt of this Court, any person or persons who shall have violated the provisions of either the Injunctional Order en-

tered on February 18, 1937 or the Injunctional Order entered on March 1, 1937.

Entered at Waukegan, Illinois, this 9th day of June, A. D. 1937.

Theodore Forby,
Judge.

Endorsed: "Filed Jun-9 '37. L. J. Wilmot, Clerk."

388 State of Illinois } ss.
Lake County }

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete copy of Final Decree filed and entered of record in said Court on the 9th day of June, A. D. 1937 in a certain cause now pending in said Court on the Chancery side thereof wherein Fansteel Metallurgical Corporation, a New York Corporation is Plaintiff and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al. are Defendants, General Number 37551.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County, this 9th day of June, A. D. 1937.

L. J. Wilmot,
(Seal) *Clerk.*

389 RESPONDENT EXHIBIT NO. 5.

6/25/37

Fansteel Metallurgical Corporation
Identification Card
Clock No..... Dept. 2
Present this card to watchman at main gate.

George Mondro
Signature
A. J. Anselm,
Supt.

390 RESPONDENT EXHIBIT NO. 6.

6/25/37

Fansteel Metallurgical Corporation
Identification Card
Clock No..... Dept. 3
Present this card to watchman at main gate.

Frances Fellens
Signature
A. J. Anselm,
Supt.

391 RESPONDENT EXHIBIT NO. 7.

6/21/37

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

STIPULATION.

It Is Hereby Stipulated and Agreed by and between Counsel for National Labor Relations Board, Counsel for the Respondents, Fansteel Metallurgical Corporation, and Counsel for Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, a party in the above entitled proceeding, as follows:

1. Fansteel Metallurgical Corporation is a New York Corporation, and has its principal place of business in the City of North Chicago, Lake County, Illinois. The Company and its predecessors have been in business for over thirty (30) years, and prior to July of 1936 the Company had never experienced any labor troubles or labor disputes of any kind. Its property in North Chicago consists of approximately seven and one-half (7½) acres of ground and fifteen (15) buildings. The Company is engaged in the business of manufacturing rare metals and fabricating products therefrom.

392 Robert H. Aitchison is and has been the president of the Company since May 1936, and prior to that time was vice-president and general manager. Mr. A. J. Anselm is and has been plant superintendent since September 8, 1936, and served the Company in various capacities, including that of plant superintendent, since February 1, 1919. Mr. Luther

Henry is assistant plant superintendent and has been an employee of the Company since June 16, 1916. Practically all of the production work of the Company is carried on in Buildings 3 and 5 and the shipping and receiving departments and some of the stock rooms are located in buildings 3 and 5. These two buildings are the key buildings of the entire plant and the cessation of operations in those buildings automatically closes the entire plant. Without the use of buildings 3 and 5 the Company is totally unable to carry on the business of extracting rare metals from ores, to fabricate finished products, to make shipments of products already finished, to receive shipment of raw materials, or to carry on any of the normal business of the Company.

2. About 2:30 o'clock in the afternoon of February 17, 1937, certain of the employees of the company ceased their work, took possession of buildings 3 and 5, and ordered and compelled the foremen and certain of the other employees, including the women employees, to leave those buildings, all without previous notice or warning to the company and without the permission or consent of the Company, or any of its officers. Thereafter, on the same day, the doors of the said buildings were closed and barricaded by the said persons
393 from within and from that time until the morning of February 26, 1937, the possession of buildings 3 and 5 was withheld from the company by the said persons, and by reason thereof all normal operations usually carried on in buildings 3 and 5 ceased during the said period resulting in the closing of the entire plant of the company and the complete stoppage of all business operations of the company.

3. At the time of the seizure of the plant, Mr. R. H. Aitchison was in Chicago. Upon being advised by A. J. Anselm, plant superintendent, he immediately returned to North Chicago with Mr. Max Swiren, a member of the firm of Levinson, Becker, Peebles & Swiren, general counsel for the company.

4. About 6:00 o'clock in the afternoon of February 17, 1937, upon the orders of Robert H. Aitchison, president of the company, Max Swiren and A. J. Anselm accompanied by Chief of Police Novak and Deputy Sheriff Ebler, went to building 3 and after announcing their identity and authority sought entrance to the building. Upon the refusal of those within the building to admit them, Mr. Swiren, acting upon orders of Mr. Aitchison, passed into the building a written notice stating that the company would appear on the following morning before Ralph J. Dady, presiding Judge of
394 the Circuit Court of Lake County, Illinois, and institute

proceedings with a view to obtaining an injunction directing the men to leave the bulding. Thereupon, Mr. Swiren, acting upon the orders of Mr. Aitchison, requested the men to leave the building, and upon their refusal so to do announced that every man remaining in the building was discharged for the violent seizure and retention of the buildings. Thereupon, Mr. Swiren, Mr. Anselm, Chief of Police Novak and Deputy Sheriff Ebler proceeded to building 5 and went through the same procedure, made the same request and announcement with the same results, and upon the refusal of the men within building 5 to leave the building announced that every man remaining in the building was thereupon discharged for the violent seizure and retention of the building.

5. At the time of the discharge of the men in buildings 3 and 5, their number and their identity, and their union affiliations, if any, with 8 or 10 exceptions, was totally unknown to Mr. Aitchison, Mr. Anselm, Mr. Swiren or anyone connected with the management of the company, and the discharge was a blanket discharge of all the men then within the buildings.

6. On the following morning, the company presented in the Circuit Court of Lake County, Illinois, its sworn complaint, a certified copy of which is attached hereto as Exhibit "A", requesting the issuance of an injunctional order
395 ordering and directing, amongst other things, the immediate vacation of buildings 3 and 5 by the men then in possession thereof, and the return of the said buildings to Fansteel Company; that thereupon the injunctional order, a certified copy of which is attached hereto and marked Exhibit "B", was entered by Ralph J. Dady, presiding Judge of the Circuit Court of Lake County, Illinois, ordering and directing, among other things, the men within buildings 3 and 5 to immediately vacate said buildings, and to turn over the buildings and contents thereof to the Fansteel Company; that shortly thereafter and on the same day, the writ of injunction, a certified copy of which is attached hereto and marked Exhibit "C", issued from and under the seal of the Circuit Court of Lake County, Illinois, pursuant to the aforesaid injunctional order; that all of the defendants named in said complaint appeared in court by their counsed, Joseph Jacob and Lester F. Collins, at the said proceedings and their appearance was entered of record; that about the hour of 12:00 o'clock, Noon, on the 18th day of February, 1937, Lawrence A. Doolittle, the duly elected and acting sheriff of Lake County, Illinois, accompanied by Thomas Kennedy, Chief Deputy Sheriff of

Lake County, Illinois, and certain other deputies, went to buildings 3 and 5 and attempted to gain entrance thereto; that the said sheriff and deputy sheriff were refused admittance to the said buildings by the men in possession thereof;

396 that they thereupon read the writ of injunction through an open window to a group of men occupying building 3 and passed copies of the said writ of injunction through the window to the men within the building; that the sheriff then and there made inquiries of the men in the building, or certain of them, as to whether or not they would comply with the terms of the said writ of injunction, and was informed that the men refused to leave the premises; thereupon, the Sheriff and his Chief Deputy proceeded to building 5 and repeated the same procedure, and immediately thereafter copies of the said writ of injunction were posted upon and about buildings 3 and 5.

7. Thereafter, on the said 18th day of February, 1937, the company presented its verified petition to the Circuit Court of Lake County, Illinois, requesting the issuance forthwith of a writ of attachment for the men within buildings 3 and 5 for a rule to show cause why they should not be adjudged guilty of contempt for failure to obey the injunctional order and writ of injunction of the Circuit Court of Lake County, Illinois, and be punished therefor; that, thereafter, on the 18th day of February, 1937, a writ of attachment issued out of and under the seal of the Circuit Court of Lake County, Illinois, a certified copy of which is attached hereto and marked Exhibit "D", ordering and directing the Sheriff of Lake County

397 to forthwith seize the bodies of certain named persons and all other persons occupying buildings 3 and 5, and bring them forthwith before the Circuit Court of Lake County, Illinois; that on the morning of February 19, 1937, Lawrence A. Doolittle, the duly elected and acting Sheriff of Lake County, accompanied by Chief Deputy Thomas Kennedy, and approximately 100 deputy sheriffs, went to buildings 3 and 5 and advised the men within the said buildings of the issuance of the said writ of attachment and requested the said men in the said buildings 3 and 5 to surrender themselves to the Sheriff and his deputies; that the men in said buildings 3 and 5 refused to comply with the request of the Sheriff, and, thereupon, the Sheriff and his deputies attempted to gain entrance to buildings 3 and 5; that the efforts of the Sheriff and his deputies to gain entrance to buildings 3 and 5 were repulsed by a barrage of missiles; that, thereafter, the men in buildings 3 and 5 continued to remain

in said buildings continuously until the morning of February 26, 1937.

8. That on the morning of February 26, 1937, Lawrence A. Doolittle, the duly elected, qualified and acting Sheriff of Lake County, Illinois, accompanied by his Chief Deputy, Thomas E. Kennedy, and approximately 50 deputy sheriffs again went to buildings 3 and 5 and attempted to gain entrance thereto; that the efforts of said Sheriff and his deputies to gain entrance to the said buildings were resisted by said persons in said buildings and they were again met by a barrage of missiles; thereupon, the Sheriff and his dep-
398 ties were compelled to use tear and ematic gas in order to evict all of said persons in said buildings 3 and 5, and by said means the possession of the said buildings was restored to the Fansteel Company.

9. During the period from February 17th to February 26th, 1937, copies of the Waukegan and Chicago daily papers were delivered twice daily to the men in buildings 3 and 5; that practically all of the papers so delivered carried accounts of the occupation of buildings 3 and 5, and that many of such stories contained statements with reference to the issuance of the injunctional order and writ of injunction heretofore mentioned and the efforts of the deputy sheriffs to evict the strikers on the morning of February 19, 1937.

10. Among the men occupying buildings 3 and 5 for the period from February 17th to February 26th, 1937, were the following, all of whom are named in Paragraphs 8 and 11 of the complaint filed herein, and none of whom were re-employed by the company:

Joseph Aigner
Andrew M. Anderson
Steve Ark
Nick Benkovich
Roy Brown
Edward Brunke
Al. Bunton
Jerome Camernik, Jr.
Ted Christianson
Joseph Chudy
Lester Crump
John Cudith, Jr.
399 Leo P. Daluga
Vincent Dietmeyer
Clarence Dreyer
Harold Dreyer
Raymond E. DuBois
Charles E. Fulkerson, Sr.
Angelo Galbavy
Phil Graimer
Stanley Grum
Eugene D. Hendee
Fred Hensley
Victor Hertel
Art Holm, Jr.
John W. Jackoway
Oscar Johnson
Tony Kancilja
Edward Kaucic
John Kondrath

Frank Latz
Herman Latz
Eric Lindberg
Steve Luczo
Elmer Luke
Nate Mogel
Frank Moxey
Frank Musech
Antone Nagode
Theodore Ohlson
Joseph Petraitis
John Praski
Merrit Pratt
Robert Pratt
Joseph Richveis
Andrew Rode
Alvar Rommppaine
Arvo Rommppaine
Ed. Ruck
Frank Scheuer
Edward Schuman
Luther Small
George W. Smith
Carl A. Swanson
Charles Warner
Paul Wells
Allen White
Fred Yaeger
Frank Zelenick

11. Also among the men occupying buildings 3 and 5 for the period from February 17th to February 26th, 1937, were the following, all of whom were re-employed by the Company:

400 Andrew Bereczky
Louis Bereczcky
Howard Bond
Wallace Bourdeau
Wilbert Braden
George Cerk
George Devine
John Germer
Ray Grossenheider
Gilbert Haney
Albert Henning
Ralph Hoffman
Chester Hook
Stanley Janas
Chester Janas
Eino Johnson
Fred Karpinski
Frank Ludlow
Frank Nickoley
Frank Osenek
Casmir Petkus
John Plewa
Frank Ptak
Reginald Ross
Eric Schultz
Alf Simonson
Arthur Sladek
Milton Sladek
Orlin Swanson
Oscar Westerlund
Charles Smith
William Van Treek
Stanley Verenski
Cornelius Dugan
Victor Oliver

12. All of the following men were employees of the company on February 17, 1937, but did not participate in the seizure and retention of the building, but aided and abetted the men within the said buildings 3 and 5 in the retention of the said buildings by soliciting, procuring and delivering of food, bedding, cigarettes, stoves, or other supplies, or in some other manner, and thereby assisted the said men in

buildings 3 and 5 to remain therein contrary to the in-
401 junctional order and writ of injunction heretofore mentioned; that all of the said men named in this paragraph had actual knowledge of the issuance of the said injunctional order and writ of injunction ordering and directing the men in buildings 3 and 5 to vacate the same, and that their activities in aiding and abetting the men in buildings 3 and 5 were done with a view to and for the purpose of assisting the said men to remain in the said buildings after the issuance of the said injunctional order and writ of injunction and with knowledge thereof. None of the men named in this Paragraph were discharged by the Company on February 17, 1937, or thereafter, and none of these men were re-called to work by the company upon the resumption of plant operations shortly after February 26th, 1937:

W. D. Crump	William D. Magness
Thomas E. Fagan	Paul Makovec
Charles E. Fulkerson, Jr.	George Mondro
Frank Furlan	Bartol Puntarich
John Grom	Harry Raynor
Otto Latz	John Starovich
Joe Lima	Mike Zelenick

402 13. Counsel for the National Labor Relations Board enters into this stipulation reserving his right to object to and does object to the consideration of any of the facts heretofore stipulated on the grounds that no one of the facts stipulted are relevant material or competent to any of the issues raised by the complaint in the within cause.

14. All of the parties hereto reserve the right to adduce additional evidenc on any one of the points covered by this stipulation.

15. This stipulation shall not operate as a waiver of the privilege heretofore claimed by witnesses as provided by subsection 3 of Section 11 of the National Labor Relations Act.

Dated: This 21st day of June, A. D. 1937.

Wm. R. Walsh,
Attorney for National Labor Relations Board.

Levinson, Becker, Peebles & Swiren and
Sidney H. Bloch,
Attorneys for Respondent.

Lester F. Collins,
Attorney for Lodge 66 of the Amalgamated Association of Iron, Steel & Tin Workers of North America.

403

EXHIBIT A.

Certified copy.

IN THE CIRCUIT COURT OF LAKE COUNTY.
• • (Caption—37551) • •

COMPLAINT.

Fansteel Metallurgical Corporation, a New York corporation, complaining of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, the Steel Workers Organizing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth
404 Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary Roe, et al., alleges:

1. That it is a corporation duly organized and existing under the laws of the State of New York and authorized and licensed to do business in the State of Illinois; that it is engaged, in the State of Illinois, in the refinement, manufacture and sale of rare metals and chemical compounds of metals.

2. That the plant and offices of the Plaintiff are located at North Chicago, Illinois, in Lake County, occupying seven and one-half acres, extending along 22nd Street between the Chicago, North Shore & Milwaukee Railroad tracks and Commonwealth Avenue, and that all of the acts herein complained of have occurred and taken place in said plant in said Lake County.

3. That Reginald Ross, R. E. DuBois, John Kondrath, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grum, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm,

Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor and certain other persons, all of whom are members of Lodge 66 of
the Amalgamated Association of Iron, Steel and Tin
405 Workers of North America, (the names of certain of the individual members of said Lodge being unknown to the Plaintiff) have conspired together and with certain other persons who are members of the Steel Workers Organizing Committee of the Committee for Industrial Organization, including one Philip Murray and one Van A. Bittner, unlawfully to seize, take and hold possession of the plants and property of the Plaintiff located as aforesaid at North Chicago, Illinois, and to prevent the Plaintiff, its officers, employees, agents and representatives from occupying said premises and from operating and carrying on the business of the Plaintiff.

4. That in pursuance of such unlawful and malicious conspiracy, at or about the hour of three o'clock in the afternoon on the 17th day of February, 1937, the said Defendants unlawfully and with force and arms seized and took possession of the plants and property of the Plaintiff, forcibly evicted from the said premises certain of the officers, agents and lawful representatives of the Plaintiff and barricaded themselves within certain of the plants and buildings on the Plaintiff's premises; that the said Defendants have refused admittance to the officers, employees and legal representatives of the Plaintiff and refused to comply with their demand to be restored to possession of said premises; that the said Defendants have refused to communicate with the lawful representatives of the Plaintiff and have, with force and arms, re-
406 pelled the attempts by the duly constituted police officers of North Chicago, Illinois, the Sheriff of Lake County and his deputies to restore the plants and properties to the lawful possession of the Plaintiff. The Defendants do now hold and retain unlawful possession of the said plants and properties of the Plaintiff.

5. That certain of the Defendants at one time were employees of the Plaintiff and as such employees had a right to egress and ingress to and from the Plaintiff's property; that while upon the premises as such employees, the said Defendants unlawfully and forcibly seized and took possession of the plants and properties of the Plaintiff and ejected therefrom certain of the officers, agents and lawful representatives of the Plaintiff as aforesaid; that thereupon, all of such employees and Defendants then in possession of the premises

were ordered out of said premises by the duly constituted representatives of the Plaintiff; that all of such employees and Defendants have since been discharged and have received notice of such discharge. That none of said persons in possession of said plants and properties of the Plaintiff have any right or license in or on said plants or properties, and each of them is an unlawful trespasser, and that the trespass being committed by each of said Defendants is a continuing trespass. Each of said Defendants has repeatedly been called upon by the Plaintiff and its lawful representatives to leave the premises of the Plaintiff and surrender the
407 possession of the Plaintiff's plants and properties which are so unlawfully withheld; and that the Defendants have been notified that unless the premises were peaceably surrendered to the Plaintiff, the Plaintiff would seek relief from a court of equity to compel their eviction; but each of the Defendants has refused and continue to refuse to leave the premises and have threatened and continue to threaten that if the Plaintiff's officers and agents attempt to evict them from the premises, they will resist by violence and bloodshed and will retaliate by destroying and injuring the plants, properties and machinery of the Plaintiff.

6. That the said Defendants who have so unlawfully seized and continue to hold possession of the Plaintiff's plants and properties number approximately one hundred men; that the said Defendants have seized the plants and properties of the Plaintiff pursuant to a purported strike of all of the employees of the Plaintiff called by the said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and by the said Steel Workers Organizing Committee of the Committee for Industrial Organization; that in fact, more than two hundred employees of the Plaintiff out of a total number of three hundred normally employed by it do not wish to go on strike, are not members of the aforementioned Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and are desirous and willing to continue their employment;
408 that certain of the persons who are now barricaded within the plants and properties of the Plaintiff have no desire to remain therein or to continue in an unlawful trespass upon the Plaintiff's property but have been coerced and intimidated into remaining in the plants by threats and personal violence; that more than two hundred of the employees of the Plaintiff have been prevented from pursuing their employment with the Plaintiff by threats of violence and in-

timidation and by guards who have been stationed by the Defendants at strategic points and who have blocked by force and arms the entrances to the plants and properties and who have threatened personal violence to any employee of the Plaintiff who shall attempt to enter upon the premises in pursuit of his lawful employment or who shall attempt to oust the Defendants from their unlawful control and possession of the plants and properties of the Plaintiff.

7. That the said defendants, in unlawful possession of the Plaintiff's plants and properties, have set up in and about the plants of the Plaintiff, sleeping and living quarters and have threatened to remain in the premises of the Plaintiff indefinitely and to prevent the Plaintiff from carrying on its operations, with the malicious purpose of ruining the Plaintiff's business; that the plant and facilities of the Plaintiff were not intended and are not adapted for such use; that the said Defendants are accordingly committing a nuisance thereon and irreparably damaging the said property.

409 8. That in fact, the purpose of the so-called strike called by the said Defendants is not the enforcement of any lawful grievance against the Plaintiff but its primary purpose is a malevolent one to injure the Plaintiff and its business, and the said purpose is being accomplished not by lawful means but by a forceful seizure and trespass on the Plaintiff's property, by threats, intimidation and violence directed toward the officers of the Plaintiff and the employees who are desirous of continuing in the employ of the Plaintiff.

9. That the plants and properties who are now in the unlawful possession of the said Defendants are of a value of one and one-half million dollars; that the said plants contain delicate machinery and equipment for the extraction of rare metals by chemical, metallurgical and electro-metallurgical processes, the manufacture of chemical compounds of metals; the said plants include a research laboratory with many important and valuable processes which are now in the course of development and refinement, and the continued possession of the properties and laboratories by the Defendants will result in the deterioration and destruction of various of the chemicals and rare metals and the loss of many of the important inventions now in the process of development. The Plaintiff's business is unique and the Plaintiff is the sole source of supply for hundreds of industrial manufacturers throughout the country of such items as rare metal contact points for ignition systems, varied tantalum parts for

410 chemical and rayon industries, molybdenum and special alloy wires for use in vacuum tubes, radios and commercial radio tubes, battery chargers and rectifiers, various hard metals for use as cutting tools in the preparation of important industrial dies. The continuance of the unlawful occupation of the plants and properties of the Plaintiff by the Defendants and the consequent interruption of operations will not only irreparably injure the Plaintiff but will cause great damage to hundreds of industrial concerns throughout the United States which are dependent for their continued operations upon the free flow of the products manufactured by the Plaintiff.

10. That the Plaintiff has a fully equipped manufacturing plant which, without operation, not only becomes useless and valueless but a heavy expense to the Plaintiff. The only way that the plant of the Plaintiff can be operated and the very valuable store of raw materials on hand manufactured into finished products and disposed of by the Plaintiff is for the Plaintiff to be permitted to exercise its legal right to employ those who would work for that purpose. The Plaintiff is being unlawfully deprived of this right by the unlawful conduct of the said Defendants who are intimidating and putting in fear by unlawful means those who would otherwise work for the Plaintiff, and the Defendants are thereby depriving the Plaintiff of the right to use and dispose of its property, constituting a direct and irreparable injury to the Plaintiff. The Defendants are persons of limited means
411 and no financial responsibility which would enable the Plaintiff to recover from the Defendants the vast losses which the unlawful acts of the Defendants are inflicting upon the Plaintiff.

11. That by reason of the fact that the said Defendants and each of them are engaged in a continuous trespass upon the property of the Plaintiff, that the number of trespassers is numerous and constantly changing, and that the continuance of such trespass is resulting in irreparable injury to the Plaintiff, the Plaintiff is without adequate remedy at law and is entitled to the aid of a court of equity in restoring to it the lawful possession and enjoyment of its own property.

12. That notice has been orally served upon the Defendants herein on numerous occasions during the afternoon of February 17, 1937 that unless said premises were surrendered forthwith to the Plaintiff, resort would be had by Plaintiff to a court of equity, with a view to invoking injunctional aid to restore said premises to the Plaintiff; that at 6:00

P. M. on February 17, 1937, a written notice was served upon Charles Swanson, Secretary of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and upon other Defendants by the delivery to him and them of said notice, which notice was as follows:

"Notice

To Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, John Kondrath, Charles Swanson, Charles Warner, R. E. DuBois, et al:

Notice Is Hereby Given that Thursday, February 18, 412 1937, at the opening of Court or as soon thereafter as counsel can be heard, we shall appear before the Honorable Ralph J. Dady, Judge of the Circuit Court of Lake County, Illinois, in the Lake County Courthouse, Waukegan, and then and there present a bill of complaint and application for preliminary writ of injunction restraining the further trespass and occupation of our property and interference with our employees, and mandatory injunction directing evacuation of our plant by you and all other trespassers."

Wherefore, Plaintiff respectfully prays that an Order may be issued by this Court:

(1) Ordering and directing that the Defendants and each of them shall immediately cease and desist from occupying or possessing any portion of the plants or properties of the Plaintiff located as aforesaid at North Chicago, Illinois, and from interfering with the Plaintiff's use and possession of all such plants and properties;

(2) That said Defendants and each of them shall immediately surrender to the Plaintiff all keys to any of the buildings or any portion thereof, now held or in the possession of the Defendants or any of them;

(3) Ordering and directing the Defendants and each of them to deliver forthwith to the Plaintiff all goods, wares, merchandise, equipment, raw materials and all property of whatever nature and description now held or in the pos- 413 session of the Defendants and which the Plaintiff owns or to which it is rightfully entitled;

(4) Ordering and directing that the Defendants and each of them shall immediately vacate and remove from the said premises and from all plants and properties now occupied or possessed by them, without damaging or injuring any portion of the said premises, plants or properties or any of the machinery, equipment or appurtenances contained thereon;

(5) Ordering and directing that the Defendants and each of them shall cease, desist and refrain from interfering with

any of the plants, properties, machinery and equipment of the Plaintiff or the Plaintiff's proper use and enjoyment thereof, or from continuing to trespass upon any of the plants, properties, machinery and equipment of the Plaintiff;

(6) Ordering and directing that the Defendants and each of them shall cease, desist and refrain from preventing or attempting to prevent, by threats, personal violence, coercion, intimidation or any other unlawful means, any officers, agents or employees of the Corporation from entering upon the premises or the plants and properties of the Plaintiff or from entering or continuing in the employment of the Plaintiff;

(7) Ordering and directing that the Defendants and each of them shall cease, desist and refrain from in any man-
414 ner interfering with the free access to the Plaintiff's premises, plants and properties of the officers, agents, employees of the Plaintiff and all other duly authorized persons, or from in any manner interfering with the operation of the plants or properties of the Plaintiff;

(8) For such other and further relief as the Court may deem meet and proper.

Fansteel Metallurgical Corporation,
By Robert J. Aitchison,
Robert J. Aitchison,
President.

Levinson Becker Peebles & Swiren,
Sidney Block,
Attorneys for Plaintiff.

415 State of Illinois }
County of Lake } ss.

Robert J. Aitchison, residing in Cook County, Illinois, being first duly sworn, on oath deposes and says:

(1) That he is the duly elected, qualified and acting President of Fansteel Metallurgical Corporation, a New York corporation, the Plaintiff in the foregoing Complaint;

(2) That he has read the foregoing Complaint by him subscribed and that he knows of his own knowledge that the facts contained therein are true.

Robert J. Aitchison.

Sworn to and subscribed before me this 18th day of February, A. D. 1937.

Nona B. Long,
Notary Public.

(Notarial Seal)

416 State of Illinois } ss.
County of Lake }

Albert J. Anselm, residing in Lake County, Illinois, being first duly sworn, on oath deposes and says:

(1) That he is the Plant Superintendent of Fansteel Metallurgical Corporation, a New York corporation, the Plaintiff in the foregoing Complaint, and is in active charge of the manufacturing and plant operations of said Corporation.

(2) That as such Plant Superintendent, he is personally familiar with all of the acts and things set forth in the foregoing Complaint; that he knows that each of the allegations contained in said Complaint is true.

A. J. Anselm.

Sworn to and subscribed before me this 18th day of February, A. D. 1937.

Nona B. Long,
(Notarial Seal) *Notary Public.*

Endorsed: "Filed Feb. 18, 1937 L. J. Wilmot, Clerk."

417 State of Illinois } ss.
Lake County }

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete copy of Complaint filed in said Court on the 18th day of February, A. D. 1937, in a certain cause now pending in said Court on the Chancery side thereof, wherein Fansteel Metallurgical Corporation, a New York Corporation is Plaintiff, and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers, etc. et al. are Defendants, Gen. No. 37551.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County this 9th day of June, A. D. 1937.

L. J. Wilmot,
(Seal) *Clerk.*

418 EXHIBIT B.

IN THE CIRCUIT COURT OF LAKE COUNTY.
* * (Caption—37551) * *

ORDER.

This cause coming on to be heard on the verified complaint of Fansteel Metallurgical Corporation, and the affidavits thereto attached, and which have been prevented in support thereof, the court Finding:

1. That due notice has been given to such of the defendants to be affected by this order, as could conveniently be served, of the time and place of the application for the entry of this order.

419 2. That irreparable injury will be caused to the Plaintiff, Fansteel Metallurgical Corporation, unless the relief prayed for in their verified complaint is granted by this court immediately.

The court being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed, That:

(1) The defendants and each of them and their members and agents shall immediately cease and desist from occupying or possessing any portion of the plants or properties of the Plaintiff located at North Chicago, Illinois, and from interfering with the Plaintiff's use and possession of all such plants and properties;

(2) Said Defendants and each of them and their members and agents shall immediately surrender to the Plaintiff all keys to any of the buildings or any portion thereof, now held or in the possession of the Defendants or any of them;

(3) The Defendants and each of them and their members and agents shall deliver forthwith to the Plaintiff all goods, wares, merchandise, equipment, raw materials and all property of whatever nature and description now held or in the possession of the Defendants and which the Plaintiff owns or to which it is rightfully entitled;

(4) The Defendants and each of them and their members and agents shall immediately vacate and remove from

420 the said premises and from all plants and properties now occupied or possessed by them, without damaging or injuring any portion of the said premises, plants or properties

or any of the machinery, equipment or appurtenances contained thereon;

(5) The Defendants and each of them and their members and agents shall cease, desist and refrain from unlawfully interfering with any of the plants, properties, machinery and equipment of the Plaintiff or the Plaintiff's proper use and enjoyment thereof, or from continuing to trespass upon any of the plants, properties, machinery and equipment of the Plaintiff;

(6) The Defendants and each of them and their members and agents shall cease, desist and refrain from preventing or attempting to prevent, by threats, personal violence, coercion, intimidation or any other unlawful means, any officers, agents or employees of the Corporation from entering upon the premises or the plants and properties of the Plaintiff or from entering or continuing in the employment of the Plaintiff;

(7) The Defendants and each of them and their members and agents shall cease, desist and refrain from in any manner unlawfully interfering with the free access to the Plaintiff's premises, plants and properties of the officers, agents, employees of the Plaintiff and all other duly authorized persons, or from in any manner unlawfully interfering with the operation of the plants or properties of the Plaintiff.

421 This order shall become effective immediately upon the filing herein and the approval by this court of a bond in the penal sum of Twenty Five Hundred Dollars ($2500.00) with good and sufficient security, conditioned upon the payment by the Plaintiff of all damages which may be sustained by the Defendants or any one or more of them by reason of the wrongful issuing of this injunction or the entering of this order, and also such costs and damages as may be awarded against the said Plaintiff in case this said order and injunction shall be dissolved.

Enter:

Ralph J. Dady,
Judge.

Dated: February 18, 1937.

Endorsed: "Filed Feb. 18 '37. L. J. Wilmot, Clerk."

422 State of Illinois, } ss.
Lake County. }

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete copy of Injunction Order filed and entered of record in said Court on the 18th day of February, A. D. 1937, in a certain cause now pending in said Court on the Chancery side thereof, wherein Fansteel Metallurgical Corporation, a New York Corporation, is Plaintiff, and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers etc. et al are Defendants, Gen. No. 37551.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County, this 9th day of June, A. D. 1937.

L. J. Wilmot,
Clerk.

(Seal)

423 EXHIBIT C.

Injunction Writ.

State of Illinois, } ss.
Lake County. }

The People of the State of Illinois:

To Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, the Steel Workers Organi ing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grun, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary Roe, et al. and to your attorneys, solicitors, agents, and servants, and to each and every one of them,—Greeting:

Whereas, it has been represented to the Honorable Ralph J. Dady, Judge of the Seventeenth Judicial Circuit of the

State of Illinois, and sole presiding Judge of the Circuit Court of Lake County, in said Circuit, and State aforesaid, on the part of Fansteel Metallurgical Corporation, a New York Corporation, Plaintiff in its complaint exhibited before said judge, and held in said Court against you, the said Fansteel Metallurgical Corporation, a New York Corporation, praying to be relieved touching the matters therein complained of. In which said complaint is stated, among other things, that you are combining and confederating with others to injure the plaintiff, touching the matters set forth in the said complaint, and that your actings and doings in the premises are contrary to equity and good conscience. And

Whereas the said Judge, having under his hand, endorsed upon said complaint an order that a Writ of Injunction and Order issued out of said Court, according to prayer of said complaint. We, therefore, in consideration thereof, and of the particular matters in said bill set forth, Do Strictly Command You, the said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, the Steel Workers Organizing Committee of the Committee for Industrial Organization, Philip Murray, Van A. Bittner, Reginald Ross, R. E. DuBois, John Kondrath, Edward Ruck, Fred Hensley, Harold Dreyer, Charles Swanson, Charles Warner, Angelo Galbavy, Frank Zelenik, Frank Latz, Robert Pratt, John Germer, Steve Ark, William Van Treek, Alexander Bunton, Stanley Grun, Roy Brown, Elsworth Peters, Ted Christiansen, A. M. Anderson, Carl Swanson, Lester Crump, Oscar Johnson, Arthur Holm, Jr., Frederick Yaeger, Jerome Camernik, Jr., David Nostell, Eugene Hendee, Vincent Dietmeyer, John Taylor, John Doe, Mary Roe, et al. and the persons before mentioned, and each and every one of you, that You and Your Members and Agents Do Absolutely:

(1) Immediately cease and desist from occupying or possessing any portion of the plants or properties of the plaintiff located at North Chicago, Illinois, and from interfering with the Plaintiff's use and possession of all such plants and properties;

(2) Immediately surrender to the Plaintiff all keys to any of the buildings or any portion thereof, now held or in the possession of the Defendants or any of them;

(3) Deliver forthwith to the Plaintiff all goods, wares, merchandise, equipment, raw materials and all property of whatever nature and description now held or in possession of the Defendants and which the Plaintiff owns or to which it is rightfully entitled;

(4) Immediately vacate and remove from the said premises and from all plants and properties now occupied or possessed by them, without damaging or injuring any portion of the said premises, plants or properties or any of the machinery, equipment or appurtenances contained thereon;

(5) Cease, desist and refrain from unlawfully interfering with any of the plants, properties, machinery and equipment of the Plaintiff or the Plaintiff's proper use and enjoyment thereof, or from continuing to trespass upon any of the plants, properties, machinery and equipment of the Plaintiff;

(6) Cease, desist and refrain from preventing or attempting to prevent, by threats, personal violence, coercion, intimidation or any other unlawful means, any officers, agents or employees of the Corporation from entering upon the premises or the plants and properties of the Plaintiff or from entering or continuing in the employment of the Plaintiff;

(7) Cease, desist and refrain from in any manner unlawfully interfering with the free access to the Plaintiff's premises, plants and properties, of the officers, agents, employees of the Plaintiff and all other duly authorized persons, or from in any manner unlawfully interfering with the operation of the plants or properties of the Plaintiff, until the Honorable Court shall make other order to the contrary. Hereof fail not under penalty of what the law directs.

To the Sheriff of said County to execute and return in due form of law.

Witness L. J. Wilmot, Clerk of said Circuit Court, and the seal thereof, at Waukegan in said County, this 18th day of February, 1937.

L. J. Wilmot,
Clerk.

(Circuit Court
Seal
Lake County, Ill.)

424 **Sheriff's Return.**

State of Illinois, }
County of Lake. } ss.

I have duly served the within writ this 18th day of February, 1937, upon all the within named persons, by leaving about 25 copies of this writ upon the premises occupied by said persons, by posting at least 2 copies of this writ on each building occupied by said persons and by leaving a copy of said writ with Carl Swanson, Harold Dreyer and Frank Latz, and by reading said writ to the said defendants.

Lawrence A. Doolittle,
Sheriff.
By Thomas E. Kennedy,
Deputy.

Endorsed:

"Fee Service	$33.00
"Mileage	14.60
"Return	.25
"Total	$47.85

"Filed Feb. 18 '37. L. J. Wilmot, Clerk."

425 State of Illinois, }
Lake County. } ss.

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete copy of Injunction Writ filed in said Court on the 18th day of February, A. D. 1937, in a certain cause now pending in said Court on the Chancery side thereof, wherein Fansteel Metallurgical Corporation, a New York Corporation, is plaintiff, and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers etc. et al. are Defendants, Gen. No. 37551.

In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County this 22nd day of June A. D. 1937.

L. J. Wilmot,
(Seal) *Clerk.*

426 **EXHIBIT D.**

State of Illinois }
Lake County } ss.

The People of the State of Illinois to the Sheriff of said County, Greeting:

We Command You, to take the following persons, to-wit:

Wilbert Braden, Mike Zelesnik, Jerome Camernik, Jr., Howard Bond, Andrew Rode, David Nostell, Geo. Kallio, R. Dubois, Eugene Hendee, Merritt Pratt, Joe Petratis, Vincent Dietmeyer, Robert Pratt, Chester Hook, Andy Berceczky, Nick Benkovich, Frank Maxey, Eric Schultz, Lee Stanley, Cornelius Dugan, Stanley Gurm, John Germer, Theodore Ohlson, Al Bunton, Ralph Huffman, Casmer Petkus, William Van Treck, Oscar Westerlund, Paul Wells, Gus Dreyer, A. Hunning, Gilbert Haney, John Plewa, R. Ross, Fred Hensley, Anthony Nagode, J. Kondrath, Ed. Ruck, Ed Brunke, G. Divine, Eino Johnson, Luther Small, L. Bereszky, Alf. Simonson, Frank Nickoley, Frank Latz, Tony Koncilia, Frank Schewer, Frank Musech, W. Bouideau, Leo Daluga, Alvar Ramppaine, Fred Karpinski, Ed Schuman, Ray Grosenheider, Ellsworth Peters, Clarence Dreyer, Ed Kancie, Ted Christiansen, Elmer Luki, Milton Coon, A. Anderson, Victor Heitel, Victor Weatherhead, Carl Swanson, John Praski, George Cerk, Lester Crump, V. Olince, Herman Latz, Charles Warner,
427 Chas. Fulkuson, Nate Mozel, Oscar Johnson, Gus Canelakes, Art Sladek, Art Holm, Jr., Angelo Galbavy, Steve Ark, Frederick Yaeger, Steve Lucyo, Frank Renek, Allan White, Aroo Rommpance, Joe Chudy, Frank Ptak, Frank Zelenek, Pete Skarbalus, Roy Brown, Joe Richveis, Geo. Smith, and any and all other persons occupying the properties and plant of the Fansteel Metallurgical Corporation, a corporation, at North Chicago, Illinois, in violation of the order entered by this court on February 18, 1937, in Cause No. 37551, and them safely keep, so that you have their bodies forthwith before the Circuit Court of Lake County, Illinois, to answer the People of the State of Illinois, to show cause, if any they have why they should not be adjudged in contempt of said court for violating an injunctional order entered on February 18, 1937, in said cause and the Writ of Injunction pursuant thereto. And have you then and there this Writ.

Witness L. J. Wilmot, Clerk of said Court, and the Seal thereof, at Waukegan, in said County, this 18th day of February, A. D. 1937.

L. J. Wilmot,
Clerk.

(Seal of Court)

428 Sheriff's Return.

State of Illinois } ss.
County of Lake }

I have duly served the within writ by seizing and attaching the bodies of the following named individuals and bringing said persons before the bar of the Circuit Court of Lake County, Illinois, on the day and date set opposite their names, all as ordered, directed and commanded in the within writ:

J. Kondrath	March 1, 1937
Frank Latz	March 1, 1937
Herman Latz	March 1, 1937
R. DuBois	March 1, 1937
Carl Swanson	March 1, 1937
Eric Schultz	March 1, 1937
John Cudich	March 2, 1937
Philip Graner	March 2, 1937
Geo. Kallic	March 2, 1937
Robert Pratt	March 2, 1937
John Germer	March 2, 1937
Ralph Huffmann	March 2, 1937
Steve Ark	March 2, 1937
Joe Chudey	March 2, 1937
Pete Skarbalus	March 2, 1937
Joe Petratis	March 2, 1937
Theodore Ohlson	March 2, 1937
Gilbert Haney	March 2, 1937
Fred Hensley	March 2, 1937
Ted Christiansen	March 2, 1937
A. Anderson	March 2, 1937
Lester Crump	March 2, 1937
Oscar Johnson	March 2, 1937
429 Frederick Yaeger	March 2, 1937
Roy Brown	March 2, 1937
Eugene Hendee	March 2, 1937
Stanley Gurm	March 2, 1937

	William Van Treck	March 2, 1937
	Gus Dreyer	March 2, 1937
	Anthony Nagode	March 2, 1937
	Luther Small	March 2, 1937
	Clarence Dreyer	March 2, 1937
	Victor Heitel	March 2, 1937
	Gus Canelakes	March 2, 1937
	Angelo Galbavey	March 2, 1937
	Steve Lucyo	March 2, 1937
	Frank Zelenck	March 2, 1937
	Joe Richveis	March 2, 1937
	Wilbert Braden	March 4, 1937
	Merritt Pratt	March 4, 1937
	Nick Benkovich	March 4, 1937
	Frank Musech	March 4 1937
	Alvar Ramppaine	March 4, 1937
	Ed. Kancie	March 4, 1937
	Victor Weatherhead	March 4, 1937
	Nate Mozel	March 4, 1937
	Art Sladek	March 4, 1937
	Andrew Rode	March 4, 1937
	Frank Maxey	March 4, 1937
	Cornelius Dugan	March 4, 1937
	Casmer Petkus	March 4, 1937
	Paul Wells	March 4, 1937
	Ed. Ruck	March 4, 1937
	Eino Johnson	March 4, 1937
	W. Bouideau	March 4, 1937
	Fred Kaprinski	March 4, 1937
	Ellsworth Peters	March 4, 1937
429½	Charles Warner	March 4, 1937
	Art Holm, Jr.	March 4, 1937
	Jerome Camernik, Jr.	March 4, 1937
	David Nostell	March 4, 1937
	Vincent Dietmeyer	March 4, 1937
	Andy Bercezky	March 4, 1937
	Al. Bunton	March 4, 1937
	Ed. Brunke	March 4, 1937
	Frank Nickoley	March 4, 1937
	Frank Schewer	March 4, 1937
	Leo Daluga	March 4, 1937
	Ed. Schuman	March 4, 1937
	Elmer Luki	March 4, 1937
	Chas. Fulkuson	March 4, 1937

Aroo Ramppance	March 4, 1937
Stanley Verenski	March 4, 1937
George Smith	March 4, 1937
Milton Sladek	March 4, 1937
Olin Swanson	March 4, 1937
Charles Smith	March 4, 1937

Lawrence A. Doolittle,
Sheriff.

Endorsed:

"Service	$77.00
"Milage	11.55
"Return	.25
"	$88.80

"Filed Mar. 12 '37 L. J. Wilmot, Clerk."

430 State of Illinois } ss.
Lake County }

I, L. J. Wilmot, Clerk of the Circuit Court in and for said County in the State aforesaid, and keeper of the Records and Seal thereof, Do Hereby Certify the foregoing to be a true, perfect and complete copy of Attachment Writ filed in said Court on the 12th day of March, A. D. 1937, in a certain cause now pending in said Court on the Chancery side thereof, wherein Fansteel Metallurgical Corporation, a New York Corporation is Plaintiff, and Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers etc. et al are Defendants, Gen. No. 37551.

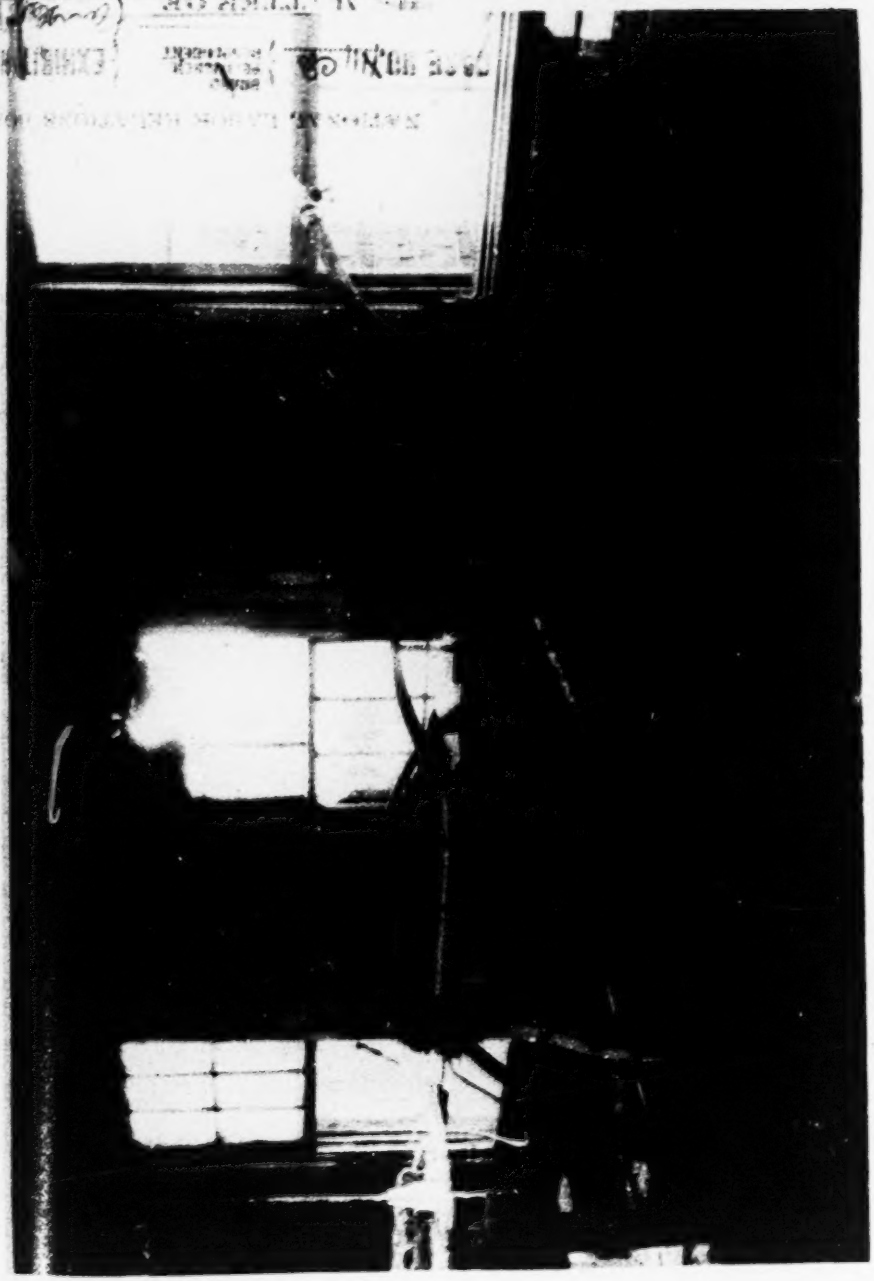
In Testimony Whereof I have hereunto set my hand and affixed the Seal of said Court, at my office in Waukegan, in said County this 22nd day of June, A. D. 1937.

L. J. Wilmot,
Clerk.

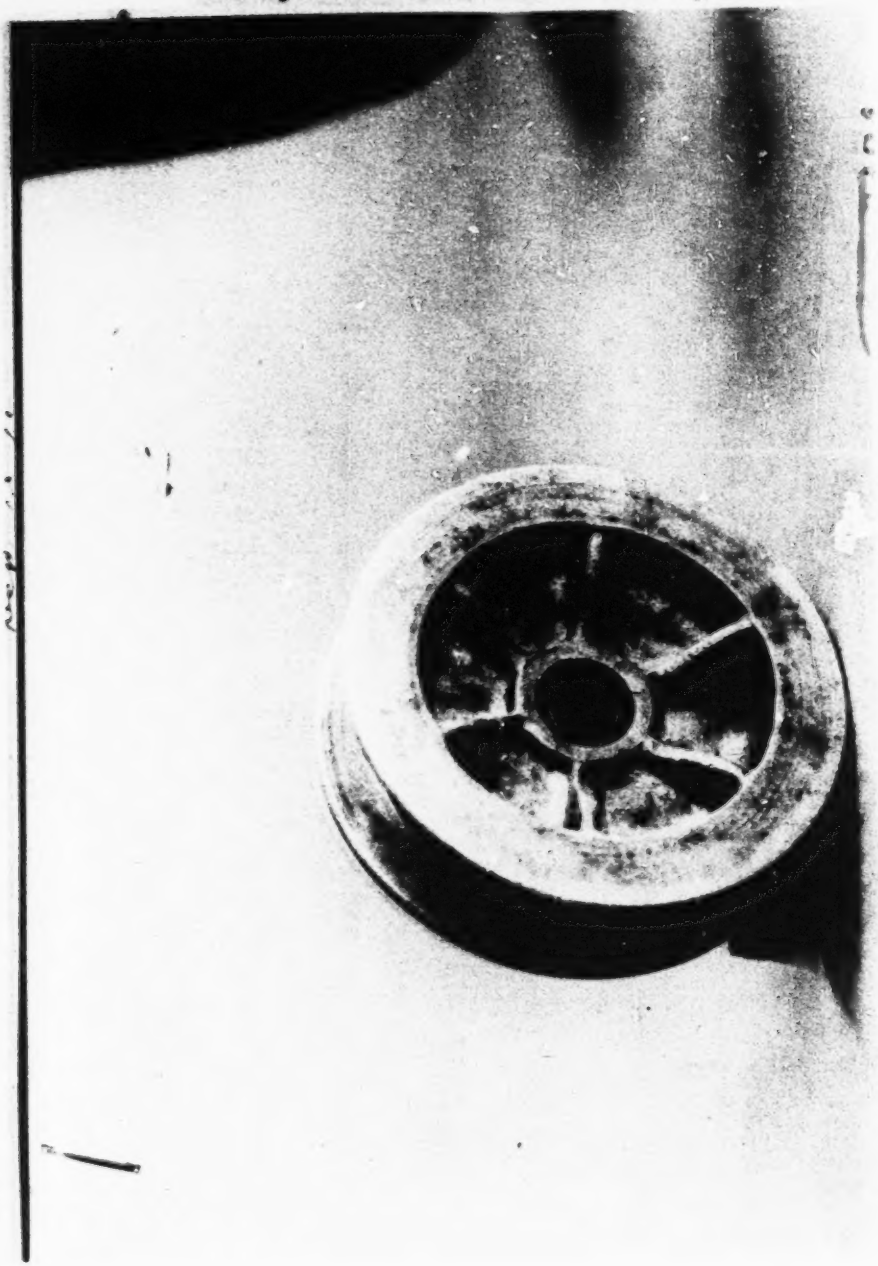
(Seal)

Respondent Exhibit No. 8

Respondent Exhibit No. 9



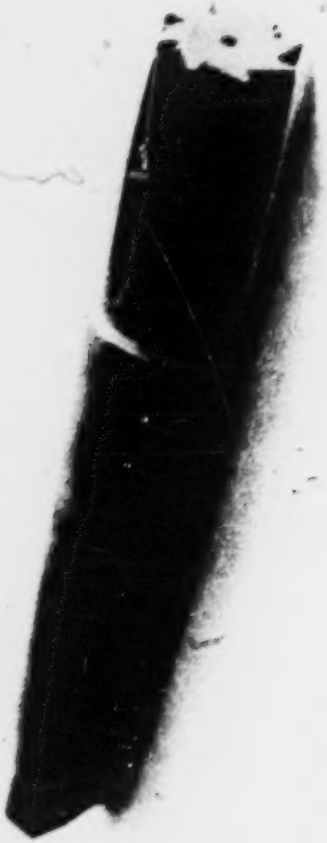
Respondent Exhibit No. 10



Respondent Exhibit No. 11



Respondent Exhibit No. 12

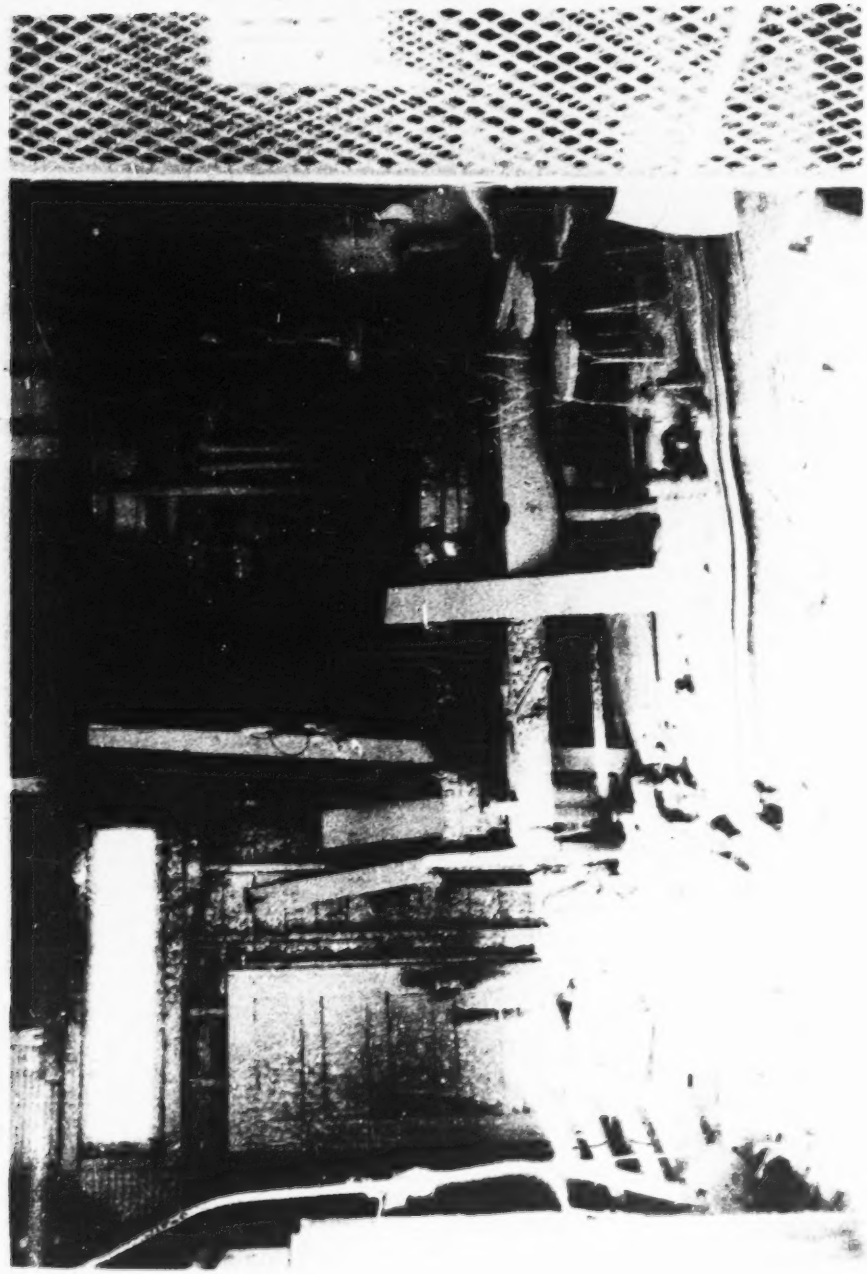


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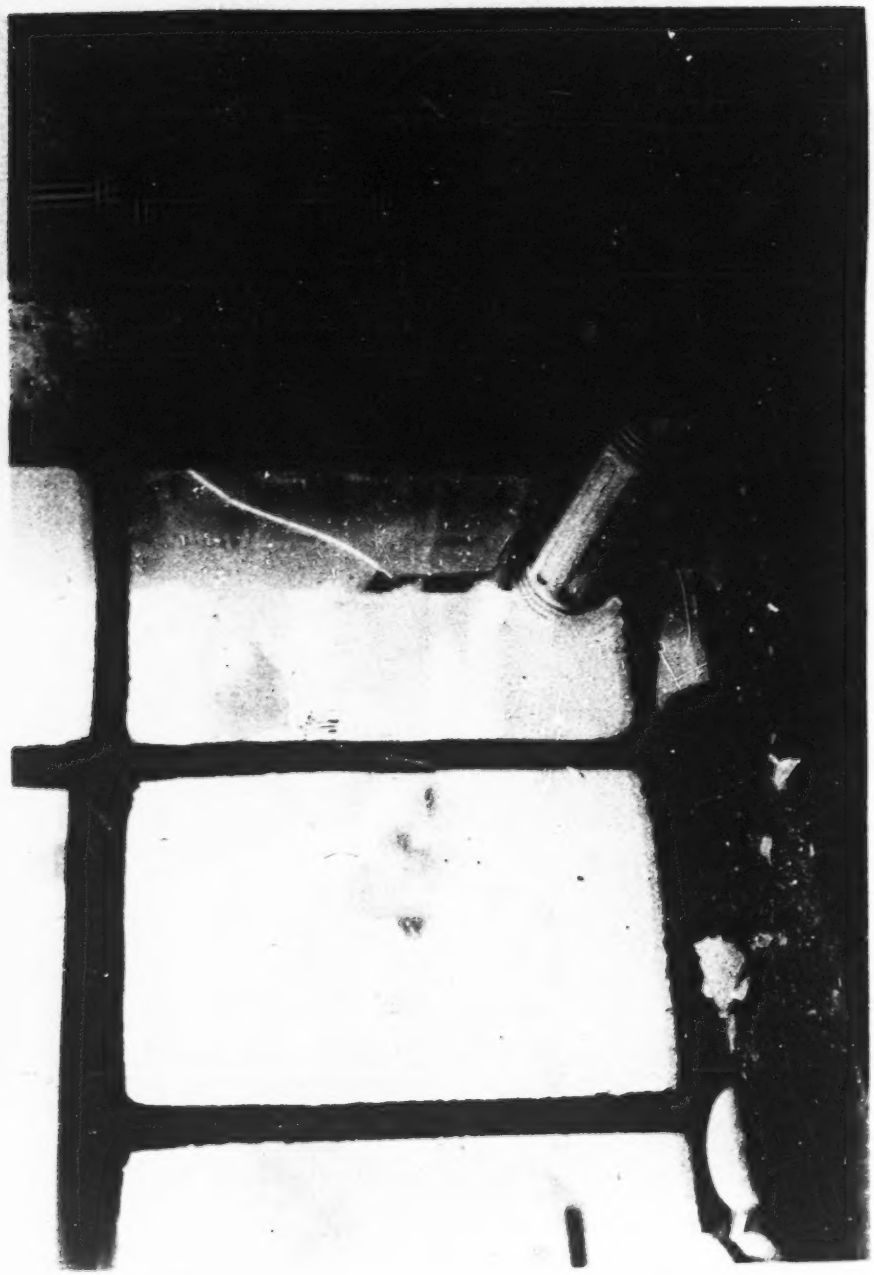
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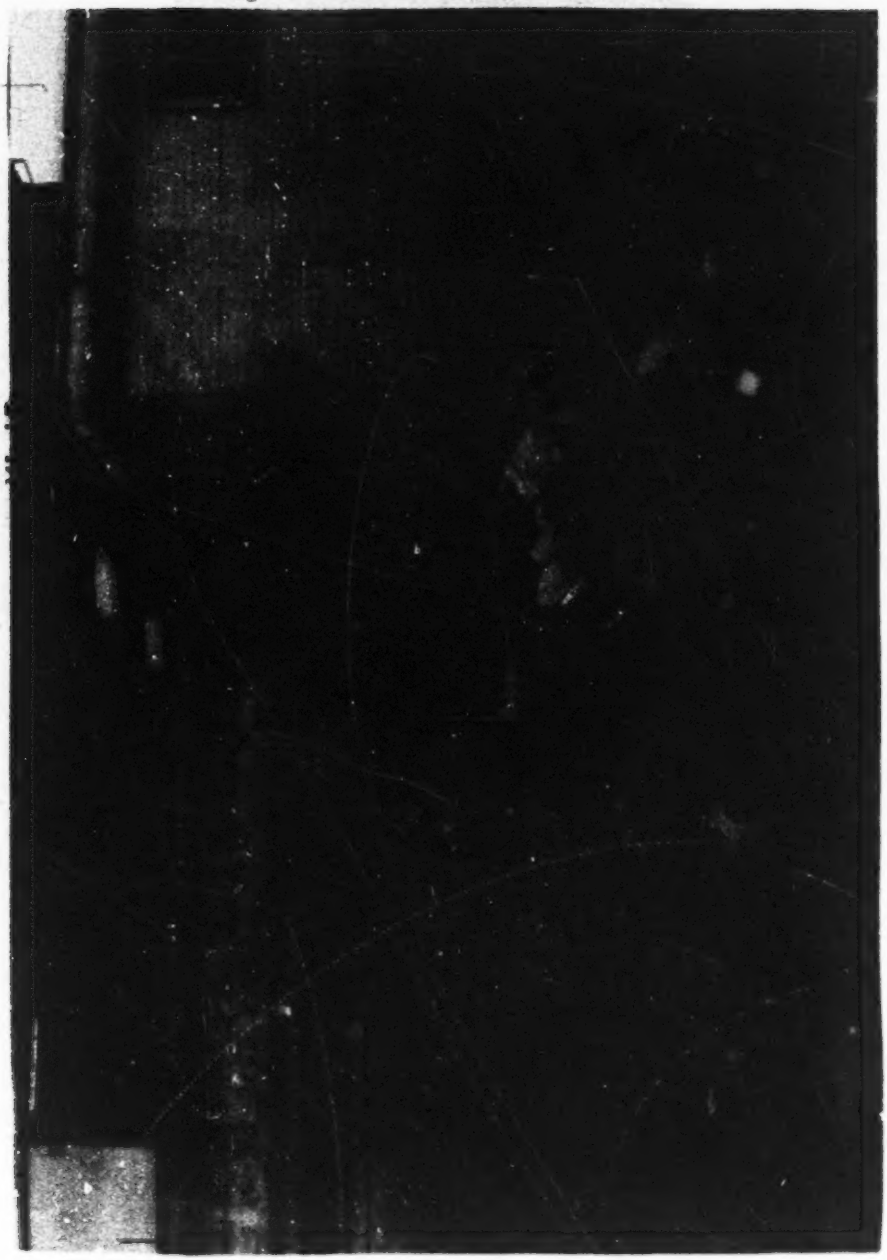
Respondent Exhibit No. 14



Respondent Exhibit No. 15



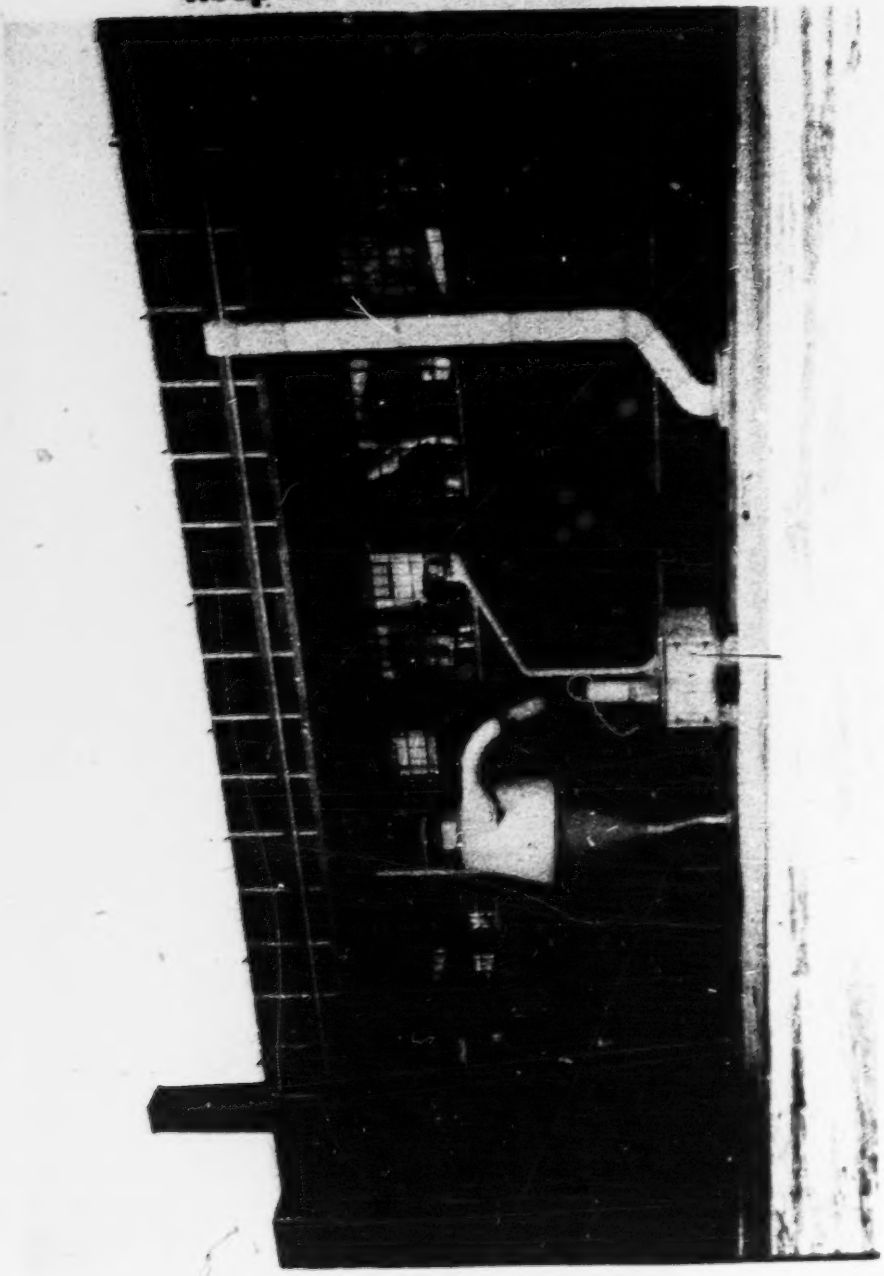
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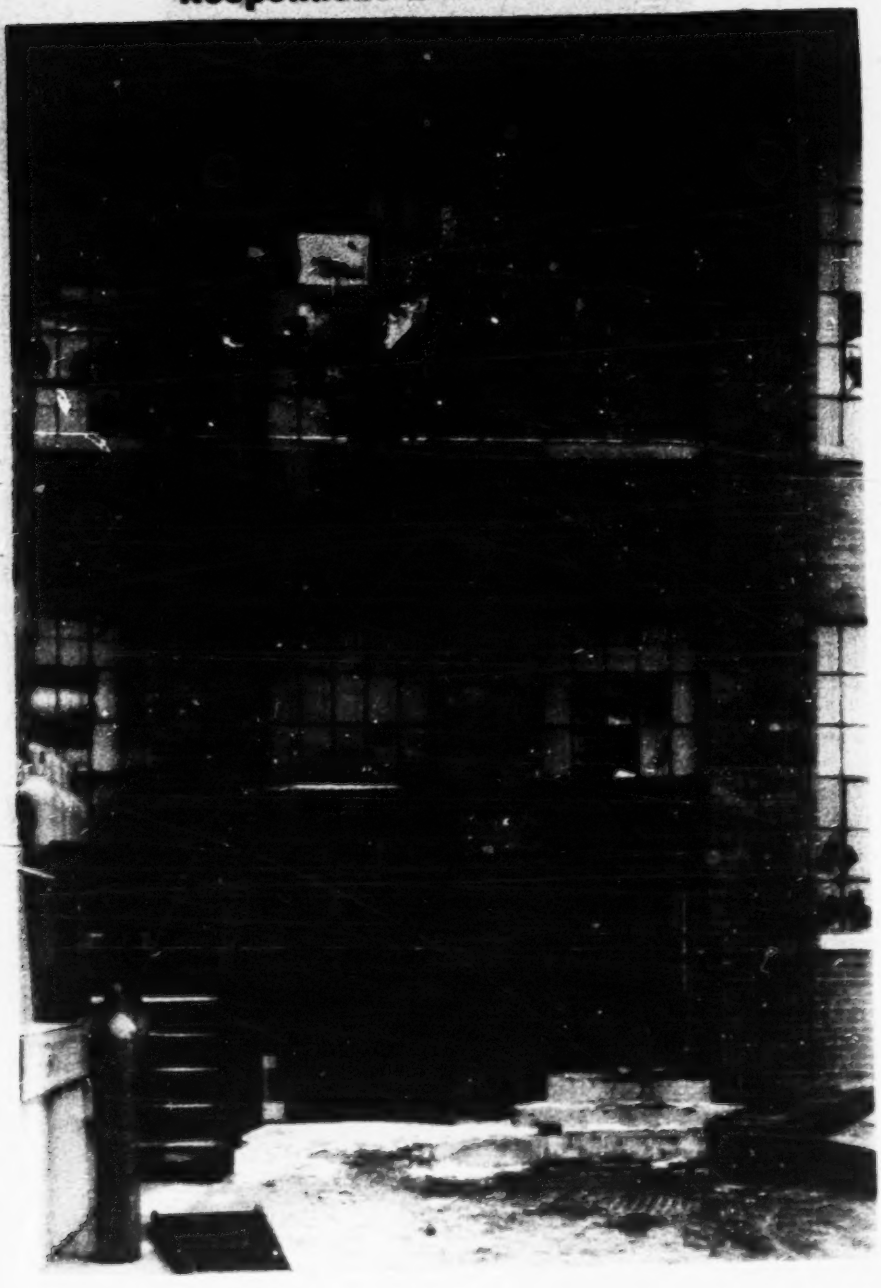
Respondent Exhibit No. 17



Respondent Exhibit No. 18



Respondent Exhibit No. 19



RESPONDENT'S EXHIBIT NO. 20.

6/22/37

Contact Employees as of February 17, 1937
Replaced by Women Employees

Grinders
(Including Crowning & Polishing)

Ed. Brunke
Al. Bunton
Phil Graimer
Stanley Grum
Victor Hertel
John Praski
Stanley Janis
William VanTreek
Frank Kuszewski
Frank Nickoley

Spinning

Frank Scheuer
Elmer Luke

Cutters

Leo Daluga
Harold Dreyer
Clarence Dreyer
Charles Fulkerson, Sr.
Edward Schuman
Eric Lindberg
T. E. Fagan
William Magness
Charles Smith
Orlin Swanson
Stanley Verenski

Note: 3 men, all old employees, are still retained on the ficult and unusual grinding jobs.

445 RESPONDENT'S EXHIBIT NO. 21.

6/22/37

DISC CUTTING COSTS TOTAL OF LABOR AND WHEELS

	Per M Discs				
	Dec. 1936	Jan. 1937	March 1937	April 1937	May 1937
Size Cut	Men	Men	Women 1st Month	Women 2nd Month	Women 3rd Month
.117 x .033	.39	.38	.37 (512,000 cut)	.25 (410,000 cut)	.29 (110,000 cut)
.142 x .037	.86	.70	.72	.60	.49
.149 x .037	.75	.74	.69	.58	.51
.149 x .042	.80	.70	.62	.52	.53
.150 x .022	.74	.78	.70	.67	.60
.172 x .024	1.09	.92	.97	.80	.64
.174 x .045	1.25	.97	.73	.70	———
.187 x .037	1.73	1.73	1.88	.75	.66

446 RESPONDENT'S EXHIBIT NO. 22.

6/22/37

Comparative Grinding Costs Per Thousand Pieces

		Men			Women		
Part No.	Operation	Dec.	Jan.	Feb.	Mar.	Apr.	May
104 1135	Crown	$.626	$.650	$.650	$.664	$.491	$.44
145 1248	Face Grind	$.696	$.650	$.650	$.589	$.502	$.53
158 1266	Crown	$.750	$.751	$.749	$.868	$.540	$.41
104 1282	Crown	$.702	$.700	$.700	$.692	$.588	——
128 1303	Crown	$.700	$.700	$.700	$.575	$.488	$.45
127 1321	Side Grind	——	——	——	$.537	$.662	——
127 1321	Face Grind	——	——	——	$.524	$.480	$.48
128 1325	Face Grind	$.65	$.860	$.650	$.641	$.532	$.45
94 2075	Crown	$.688	$.700	$.699	$.834	$.482	$.46
121 2120	Crown	$.736	$.750	$.750	$.655	$.518	——
94 2256	Crown	$.700	$.700	$.700	$.614	$.582	$.53

Note: Items underlined indicate no production for the month but show the prevailing piece rate.

447 RESPONDENT'S EXHIBIT NO. 23.

6/22/37

Maintenance Department

Total Number of Jobs reduced from 14 to 4
As of February 17, 1937

Carpenters & Millwrights

Andrew Anderson
Ted Christiansen
Eugene Hendee
Art Holm, Jr.
Oscar Johnson
Carl Swanson
Jack Taylor (Part time—John Taylor)

Carpenter's Helper

None

Electricians

Lester Crump
Vincent Dietmeyer
Charles Warner

Electrician's Helper

Jerome Camernik, Jr.

Steamfitters

Fred Yaeger
David Nostell

Foreman

Art Holm, Sr.

448 RESPONDENT'S EXHIBIT NO. 24.

6/22/37

Tool Room Employees as of February 17, 1937
Who Did Not Return to Work After March 1, 1937

R. E. DuBois
Frank Moxey
Ted Ohlson
Paul Wells
Joe Petraitis
Joseph Hoff
Harry Rayner
Joseph Aigner (Janitor)

449 **RESPONDENT'S EXHIBIT NO. 25.**

6/22/37

SUMMARY OF FANSTEEL METALLURGICAL CORPORATION EMPLOYEES AND VASCOLOY-RAMET CORPORATION EMPLOYEES

	Sept. 10, 1936	Sept. 21, 1936	Feb. 17, 1937	June 11, 1937
Production and Maintenance Employees of Fansteel Metallurgical Corporation:				
Hourly employees (production, tool room, maintenance, watchmen and yard)	186	189	234	250
Watch, yard and firemen (hourly basis)	5	5	5	5
Laboratory employees engaged in production work (monthly basis)	4	4	4	4
Total	195	198	243	259
Production and Maintenance Employees of Vascoloy-Ramet Corporation:				
All on hourly basis	48	48	52	51
Total	243	246	295	310
Other Employees Not Listed Above:				
Fansteel Metallurgical Corporation:				
Foremen and Production Supervision	12	12	13	11
Engineering Department	6	5	7	6
Laboratory Employees (non-production)	13	12	13	14
Administrative offices and Sales	30	30	39	40
Vascoloy-Ramet Corporation:				
Administrative & Office	8	8	9	10
Total	69	67	81	81
Grand Total	312	313	376	391

Respondent Exhibit No. 26

INE JOURNAL-TIMES * SATURDAY, FEBRUARY 20, 1937



DEPUTIES DODGED THESE IN FIGHT—Two of the 125 policemen and sheriff's deputies who engaged in a spectacular but futile fight to rout 82 sit-down strikers in two North Chicago, Ill., plants of the Fansteel Metallurgical corporation, are shown later examining "ammunition" hurled at them by the strikers. The collection includes pulley wheels, pipe and sundry other pieces of hardware. (Associated Press photo).

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Respondent Exhibit No. 27

WAUKEGAN NEWS-SUN * SATURDAY, FEBRUARY 20, 1937



©News-Sun Photo

STRIKE AMMUNITION. Special deputies are shown here examining the pulleys, steel rods, tubes and other missiles hurled at them by sitdown strikers in the fracas early yesterday morning. The strikers' ammunition rather indicates that some of the machinery must have been stripped to provide the strikers with missiles.

18

44

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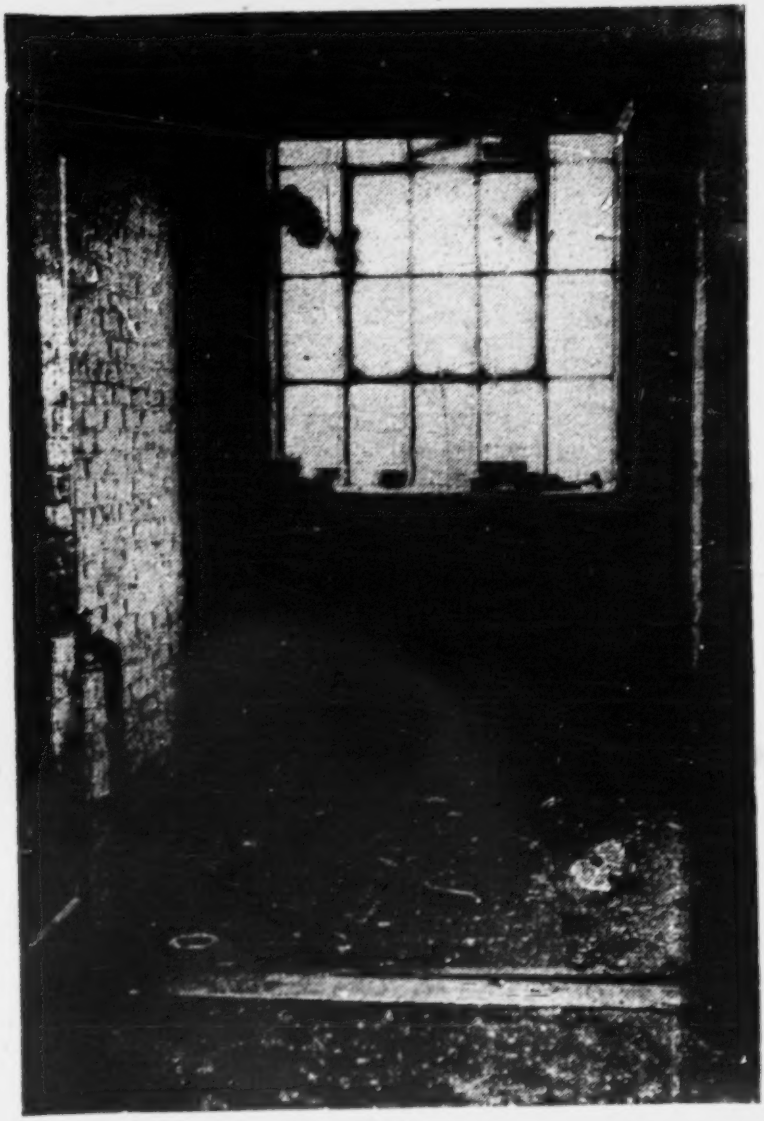
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Respondent Exhibit No. 28

CHICAGO AMERICAN * FRIDAY, FEBRUARY 26, 1937



Littered elevator in the Fansteel plant after the battle. Fragments of metal were used as weapons by the strikers. They had small effect.



The battle of North Chicago had casualties on both sides, for the "sitters" answered the gas barrage with one of bolts. Here is an injured deputy sheriff being assisted away from the "front."

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Respondent Exhibit No. 29

HERALD & EXAMINER * SATURDAY, FEBRUARY 27, 1937



This is not just before the battle, brother; it's right in the midst of it. Arrow points to a pulley wheel hurled by Fansteel "sitters" at the two ladies, who are equipped with gas masks and gas guns.

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454 RESPONDENT EXHIBIT NO. 30-A.

6/22/37

Factory Work Order

Date Feb. 11-37.

To Art Holms

Please Proceed With the Following Work:

The two west windows in contact dept. need attention, either tighten up by caulking or install a deflector inside, so as to force the cold air towards ceiling—Girls are complaining of this location being to cold to work—while the center of room is far to hot for comfort.

This work to be done at once.

For Further Details See.....

Bldg..... Floor..... Dept.....

Miscellaneous .....

Charge Material and Labor to

Dept.....Acct. No.....A. F. E. No.....S. J. O.....

A. J. Anselm,

Factory Superintendent.

Finished.....

Return This Copy to Supt. Office

Original

455 RESPONDENT EXHIBIT NO. 30-B.

6/22/37

Factory Work Order

Date 11-25-36.

To Holm

Please Proceed With the Following Work:

Install new rubber ring in dry pipe valve in Bldg. 11.

Ring has been ordered.

For Further Details See.....

Bldg..... Floor..... Dept.....

Miscellaneous .....

Charge Material and Labor to

Dept. 18. Acct. No. 304. A. F. E. No.....S. J. O.....

A. J. D.,

Factory Superintendent.

Finished.....

Return This Copy to Supt. Office

Original

456 RESPONDENT EXHIBIT NO. 30-C.

6/22/37

Factory Work Order

To Art Holm Date 9-4-36.

Please Proceed With the Following Work:
Partition in basement between cleaning unit and the centerless grinder.

— did not do —

For Further Details See.....
Bldg..... Floor..... Dept.....
Miscellaneous .....

Charge Material and Labor to
Dept. 2. Acct. No. 303. A. F. E. No.....S. J. O.....
L. C. H.,
Factory Superintendent.
Finished.....

Return This Copy to Supt. Office
Original

457 RESPONDENT EXHIBIT NO. 30-D.

6/22/37

Factory Work Order

To Art Holm Date Jun 20 1936.

Please Proceed With the Following Work:
Put in Larger Wash Bowl in Toilet in Bldg. 5—1st Floor.
Remove 1 Toilet & put urinal in this so as to make larger space for washing hands.
Called in outside contractor to do this job.—12/15/36.
For Further Details See Streed.
Bldg. 5. Floor 1st. Dept. 13 & 14.
Miscellaneous .....

Charge Material and Labor to
Dept. 18. Acct. No. 304. A. F. E. No.....S. J. O.....
L. C. H.,
Factory Superintendent.
Finished.....

Return This Copy to Supt. Office
Original

458 RESPONDENT EXHIBIT NO. 30-E.

6/22/37

Factory Work Order

Date 9-1-36.

To Art Holm

Please Proceed With the Following Work:
Please change pulley on big Grinder in Bas to run 1900 R.P.M.
For Further Details See Mask
Bldg. 3. Floor Bas. Dept. 4
Miscellaneous .....

Charge Material and Labor to
Dept. 4. Acct. No. 303. A. F. E. No.....S. J. O.....
L. C. H.,
Factory Superintendent.

Finished.....

Return This Copy to Supt. Office
Original

459 RESPONDENT EXHIBIT NO. 30-F.

6/22/37

Factory Work Order

Date 1-15-36.

To Art Holm

Please Proceed With the Following Work:
6 Braces or Supports for water jackets of furnaces.
For Further Details See.....
Bldg. 4. Floor..... Dept. 18.
Miscellaneous .....

Charge Material and Labor to
Dept. 18. Acct. No. 303. A. F. E. No.....S. J. O.....
A J. Dower,
Factory Superintendent.

Finished.....

Return This Copy to Supt. Office
Original

460 RESPONDENT EXHIBIT NO. 30-G.

6/22/37

Factory Work Order

To Holm Date 2-11-37.

Please Proceed With the Following Work:
Repair 3 steamlines. Leaking badly.
Install new Door at Fire escape exit. Rush. On 4th floor.
For Further Details See Hall
Bldg. 15. Floor 4th. Dept. 6.
Miscellaneous .....

Charge Material and Labor to
Dept. 6. Acct. No. 303. A. F. E. No..... S. J. O.....
A. J. A.,
per L. C. H.,
Factory Superintendent.

Finished.....

Return This Copy to Supt. Office
Original

462 RESPONDENT EXHIBIT NO. 31.

6/22/37

Inter-Office Correspondence—Fansteel Metallurgical Corporation.

To A. Holm
J. Welch
H. Philip

From A. J. Anselm
Date Oct. 15, 1936
Subject

In order to organize our Tantalum Fabrication department in the west half of the tool room, it is absolutely essential that this move be made with sufficient men. I therefore suggest that we use men from the tool room and also employees in Howard Philips gang to move this equipment today, Friday and Saturday. I don't believe there will be any objection on the part of the men in helping out on this type of work. Experienced millwrights can stand by to put up countershafts, pulleys, belts, etc.

You can reach me on the phone if you have any comments to make, otherwise I will assume that it will be made over the week end and there will be no further delay.

AJA:WS A. J. Anselm.

462a RESPONDENT EXHIBIT NO. 32.

6/22/37

Inter-Office Correspondence—Fansteel Metallurgical Corporation.

To A. Holm

From A. J. Anselm
Date November 23, 1936
Subject

The following list of jobs will include work remaining unfinished on work list issued to you Oct. 7th.

I am calling your attention to items 3 & 4 listed under building 6. You were instructed to do this work during the month of October.

Contact Department.

1. Install new benches, change exhaust system.
2. Arrange spinning in a group, and complete wiring.

Tool Room.

1. Bring up a lead from the suction side of contact exhauster to tool room. This exhauster to be located outside of building, on foundation we have prepared for same. Krause to run a suitable duct system to reach carbon and graphite jobs. A. F. E. 449.

2. Set up Van Norman Milling Machine. A. F. E. 450.

Chemical Building.

1. Partition for a room South East corner of building 8, repair floors and install Marcy Ball Mill equipment. A. F. E. 467 and 447.

Building 6.

1. Install arc welding curtain holders. Curtains are in for this job.
2. Move all millwright and maintenance equipment to new location. Surplus parts, pipe fittings, valves, etc., to be returned to stock. All lumber, pipe, new and usable, to come over to new location.
3. Repair skylight in south end of building 6.
4. Insulate the die polishing room. This room is too cold.

Tantalum Fabrication Department.

1. Install exhaust fan in North West corner. Fan is in stock for this job. A. F. E. 449.

A. J. Anselm.

462b RESPONDENT EXHIBIT NO. 33.

6/22/37

Inter-Office Correspondence—Fansteel Metallurgical Corporation.

To A. Holm
A. Nelson
E. A. Streed

From A. J. Anselm
Date December 9, 1936
Subject

A new form has been issued to Mr. Nelson and Mr. Holm for the purpose of reporting correctly labor on the various jobs. This replaces the old job card formerly used. This form should reach the accounting department in the first mail following the day reported. Mr. Nelson will only receive copies of A. F. E. when and if he is required to perform some labor in connection therewith.

Mr. Streed will forward a carbon copy of all material requisitions which show A. F. E. number and send direct to this office.

A. J. Anselm.

462c RESPONDENT EXHIBIT NO. 34.

6/22/37

Inter-Office Correspondence—Fansteel Metallurgical Corporation.

To A. Holm

From A. J. Anselm
Date Oct. 7, 1936
Subject

In order that you may have a clear picture of the work you are responsible for in connection with the various moves we are making and propose to make, I am outlining for your immediate consideration the several jobs. The purpose in giving you the information at this time is to enable you to select materials required for each move far enough in advance so we will not be held up when we get around to the job. Work listed under carpenter work must be completed this month.

Carpenter Work.

No. 1. Build Ore storage room in warehouse, building 4. No windows necessary. Install two lights, one in the center of each bay, a door equipped for pad-lock.

No. 2. Install suitable insulation in the Die polishing room.

No. 3. Make the necessary benches for contact grinding department.

No. 4. Repair sky light, building 6.

No. 5. Finish up the window sash installation in Mr. Raithel's office, building 14.

Exhaust Systems.

No. 1. Install blower south of building 3.

No. 2. Extend duct system in basement to blower. (Krause Sheet Metal).

No. 3. Remove the pressure blower from the contact department and put on suitable concrete foundation just outside of the wall.

No. 4. Mr. Krause to connect up with new polishing benches.

No. 5. Install suitable exhaust system for tantalum carbide arc welding, this will be located in the west end of tool room.

No. 6. Install suitable dust extractor for carbon, or graphite jobs in the tool room.

Electrical Work.

No. 1. Yard lights to be installed on fence gates and also on buildings as instructed.

Steam Fitting.

No. 1. Install unit heaters in Chemical building.

No. 2. Install hot water system in building 15. This has been changed to an electrical unit.

No. 3. Install vacuum pump basement office building.

A. J. Anselm.

462d

RESPONDENT EXHIBIT NO. 35.

6/22/37

Authority to Pay

Date 1-26 1937

Number 52 Name Jasper Leskovec
Reasons For Leaving Laid off
Reduction of force in Nov. 1936
Re-employ..... Yes..... No.....
Pay To 1-26-37 Department Chemical
O. K. A. J. Anselm .....
Superintendent. *Foreman*
LCH

Respondent Exhibit No. 36



WAUKEGAN, ILL., May 21 1937 No. 1

FIRST NATIONAL BANK 70-159
ESTABLISHED 1852

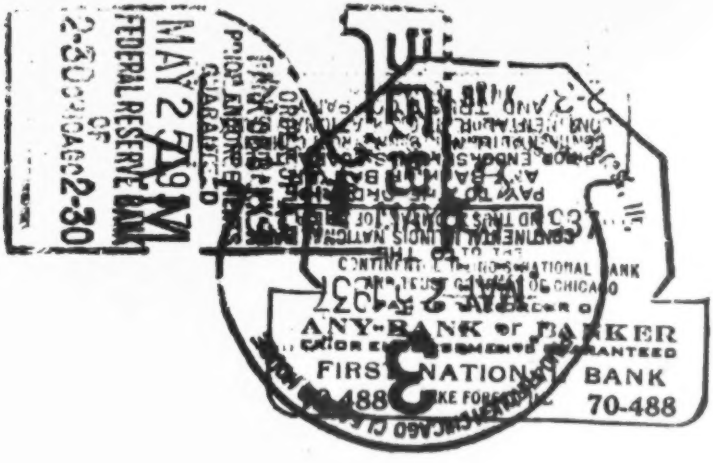
PAY TO THE ORDER OF Holy Family Church $ 10.00

Ten and 00/100 DOLLARS

COLLECTIBLE AT PAR THROUGH
THE FEDERAL RESERVE BANK
2-30 OF CHICAGO 2-30

Pave Metal Workers Local
F. T. Quirk

HOLY FAMILY CHURCH
1840 So. Lincoln Street
North Chicago, Illinois



1853

Respondent Exhibit No. 37



WAUKEGAN, ILL., June 1 1937 No. 3

FIRST NATIONAL BANK 70-159

ESTABLISHED 1852

TO THE ORDER OF National Office Supply Co. $ 7.60

three and 60/100 DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF CHICAGO 2-30

Rare Metal Naikeweld Arcos
L. A. Bristol

PAY TO THE ORDER OF
THE FIRST NATIONAL BANK
WAUKEGAN, ILL.
NATIONAL OFFICE SUPPLY COMPANY
L. A. MORRIS, Treasurer

1855

Respondent Exhibit No. 38



WAUKEGAN, ILL. June 1 1932 No. 4

FIRST NATIONAL BANK 70-159

ESTABLISHED 1852

PAY TO THE ORDER OF Bert Holt $3.00

Three and 00/100 DOLLARS

COLLECTIBLE AT PAR THROUGH
THE FEDERAL RESERVE BANK
2-30 OF CHICAGO 2-30

For Metal Workers of America
F. Briet

Bert Holt

TELLER 3 70-159

466 RESPONDENT EXHIBIT NO. 39.

6/23/37

Smith-Hurd Illinois Ann. Stat., Chap. 38, Sec. 376
Intimidation

By combinations, etc.

If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing, by threats, suggestions of danger, or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500, or confined in the county jail not exceeding six months. (1874, March 27, R. S. 1874, p. 348, div. 1, Sec. 158.)

467 RESPONDENT EXHIBIT NO. 40.

6/23/37

Smith-Hurd Illinois Annotated Statutes, Chap. 38.
Conspiracy.

Sec. 139. Conspiracy to do an illegal act—Boycott—Black list—Penalty—Marketing associations of farmers, dairymen and fruit growers not included—Common law conspiracy.

"If any two or more persons conspire or agree together, or the officers or executive committee of any society or organization or corporation, shall issue or utter any circular or edict, as the action of or instruction to its members, or any other persons, societies, organizations, or corporations, for the purpose of establishing a so-called boycott or black list, or shall post or distribute any written or printed notice in any place, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business or employment, or property of another, or to obtain money or other property by false pretenses, or to do any illegal act injurious to the public trade, health, morals, police or administration of public justice, or to prevent competition in the letting of any contract by the State, or the authorities of

any counties, city, town or village, or to induce any person not to enter into such competition, or to commit any felony, they shall be deemed guilty of a conspiracy; and every such offender, whether as individuals or as the officers of any society or organization, and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both.

"Associations, corporate or otherwise, of farmers, gardners (gardeners) or dairymen, including livestock farmers and fruit growers engaged in making collective sales or marketing for its members or shareholders of farm, orchard or dairy products, produced by its members or shareholders are not conspiracies, contracts, agreements, arrangement of (or) combinations made by such associations or the members, officers, or directors thereof in making such collective sales and marketing and prescribing the terms and conditions thereof are not conspiracies and they shall not be construed to be injurious to the public trade. (1874, March 27, R. S. 1874, p. 348, div. 1, sec. 46; Laws 1887, p. 167, sec. 1; 1919, June 30, Laws 1919, p. 425, sec. 1.)

"If any two or more persons conspire or agree together, or the officers or executive committee of any society or organization or corporation, shall issue or utter any circular or edict, as the action of or instruction of its members, or any other persons, societies, organizations, or corporations, for the purpose of establishing a so-called boycott or black
468 list, or shall post or distribute any written or printed notice in any place, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business, or employment, or property of another, or to obtain money or other property by false pretenses, or to do any illegal act injurious to the public trade, health, morals, police or administration of public justice or to prevent competition in the letting of any contract by the State, or the authorities of any counties, city, town or village, or to induce any person not to enter into such competition, or to commit any felony, they shall be deemed guilty of a conspiracy; and every such offender, whether as individuals or as the officers of any society or organization, and every person convicted of conspiracy at common law, shall be fined not exceeding $2,000 or shall be imprisoned in the county jail not exceeding one year, or shall be imprisoned in the penitentiary for a

term of not less than one year and not exceeding five years, or may be so fined and so imprisoned in the county jail or penitentiary. (1874, March 27, R. S. 1874, p. 348, div. 1, sec. 46; Laws 1887, p. 167, sec. 1; 1919, June 28, Laws 1919, p. 426, sec. 1.)"

469 RESPONDENT EXHIBIT NO. 41.

6/23/37

June 21, 1937

Employees Discharged, Layed Off, or Left Company of Own Accord

(Exclusive of those named in Complaint or Answer)

Charles Ambrose	Laid Off	November 28, 1936
Albert Jackolat	Left Voluntarily	November 21, 1936
Alfred Johnstone	Discharged	December 5, 1936
Frank Lodesky	Died	October 14, 1936
Otto Mertins	Left Volnntarily	February 12, 1937
Fred Mesec	Laid Off	November 28, 1936
Tony Turpin	Laid Off	November 28, 1936
Miss LaVerne Salo	Discharged	March 17, 1937
Victor Oliver	Left Voluntarily	March 5, 1937
Russell Pester	Left Voluntarily	June 4, 1937
Victor Slobe	Laid Off	November 28, 1936

Respondent Exhibit No. 42

LODGE MEMBERSHIP RECORD

FORM 1

NAME Orlin Swanson

ADDRESS 1317 Garfield Pl. (Wauk.) INITIATED Jul 1937

LODGE OR PLANT #66 (Contact)

AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA

S. W. O. C. Card No. 3060

1936	Dues	Assm't.	Received By	1937	Dues	Assm't.	Received By
AUG.				FEB.			
SEPT.				MAR.			
OCT.				APRIL			
NOV.				MAY			
DEC.				JUNE			
1937 JAN.				JULY			

2998 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

INTERMEDIATE REPORT.

Upon a charge duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Leonard C. Bajork, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, as amended, Article IV, Section 1, issued its complaint dated May 25, 1937, against the Fansteel Metallurgical Corporation, respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on May 26, 1937, in accordance with said Rules and Regulations, Series 1, as amended, Article V, Section 1.

The complaint alleged that the respondent was engaged in the production and manufacture of rare metals at North Chicago, Illinois, operating through several subsidiaries, and engaging in interstate commerce; that the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, was a labor organization within the meaning of the National Labor Relations Act; that a unit appropriate for the purposes of collective bargaining consisted of production and maintenance workers of respondent, excluding supervisory, clerical and laboratory employees; that a majority of the employees of this unit had designated the said Lodge 66 as its representative for the purposes of collective bargaining before September 10, 1936; that on Septem-
2999 ber 10 and 21, 1936, and February 17, 1937, respondent refused and failed to bargain collectively with the said Lodge 66; that respondent contracted with and employed, through the National Metal Trades Association, Alfred Johnstone for the purposes of espionage against the union and also employed A. J. Anselm to break up the union and likewise transferred the president of the union from the machine shop to the office for the purposes of intimidation; that respondent on February 17 and 18 discharged certain employees because of their membership in the union and related activities, in violation of the Act; that respondent refused and failed to reinstate certain employees for similar reasons; that respondent discouraged membership in the said Lodge 66 and also caused to be organized and has dominated and interfered with a labor organization known as Rare Metal

Workers of America, Local No. 1; that by reason of the foregoing respondent violated Section 8, subdivisions (1), (2), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Thereafter respondent filed its answer, and during the course of the trial was, on motion, allowed to file its amendment to the answer with a reservation of the privilege of noting discrepancies between the answer and the amendment. The answer, as amended, admitted the allegations of the complaint pertaining to the nature of its business and its participation in interstate commerce but denied any knowledge concerning Lodge 66. The answer stated that the maintenance employees should be excluded from the unit appropriate for collective bargaining, denied that a majority of the employees had designated Lodge 66 as their representative, alleged that members obtained for Lodge 66 were obtained through coercion and that the Rare Metal Workers of America, Lodge No. 1, was a labor organization representing approximately 90 per cent of the employees.

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The answer further stated that respondent did not enter int any arrangement with the National Metal Trades Association but through that Association did engage Albert Johnstone for the purposes of observing plant production, efficiency, etc., but that he did not interfere with the employees in the exercise of their union rights; that Anselm's reinstatement resulted from a promotion; that the union president was transferred from the machine shop to assist in the development of machine parts; that on February 17, 1937, some of the employees unlawfully seized respondent's buildings and that the Circuit Court of Lake County, Illinois, issued an injunction and a writ of attachment againt the said employees who refused to obey the same and were subsequently evicted on February 26, 1937, by the Sheriff; that respondent had discharged only those persons engaged in the unlawful seizure of its buildings; that it had not reinstated certain employees because of their participation in the said unlawful seizure, because of their discharge, and because of the abolition of certain jobs; that other employees were discharged for inefficiency, insubordination, and absence from the plant; that other persons were offered reinstatement and refused and that still other employees were not reinstated because of inefficiency; that the Rare Metal Workers of America, Local No. 1, is a bona fide labor organization and respondent had no connection with its organization, conduct or mainte-

nance. Respondent denied that it violated the various provisions of the Act.

Before the hearing respondent filed with the Regional Director a motion that the time for filing its answer should be extended to June 7, 1937, and the date of the hearing be adjourned from June 7, 1937, for at least 10 days because of proceedings then being heard before the Circuit Court of Lake County, Illinois, regarding the violation by re-
3001 spondent's employees of the Circuit Court's injunction order and writs pertaining to the seizure and surrender of respondent's buildings. Accordingly the Acting Regional Director extended the time for filing the answer to June 4, 1937, but denied the motion for adjourning the date of the hearing.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing commencing on June 7, 1937, and continuing at various intervals through June 25, 1937, at Waukegan, Illinois. Respondent appeared by Levinson, Becker, Peebles and Swiren, acting through Mr. Max Swiren and Mr. Harold M. Keele and by Mr. Sidney H. Block, and participated in the hearing. Lodge 66 appeared by Mr. Lester Collins, its attorney, and likewise participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to the parties. The parties were granted an opportunity to present oral arguments at the close of the hearing and to file briefs, but did not avail themselves of the same.

At the commencement of the hearing respondent's counsel moved for an adjournment because of the proceedings then being had before the Circuit Court of Lake County, Illinois, involving the alleged seizure of respondent's buildings during February, 1937. It appearing that respondent had ample counsel to present its case in both courts, that witnesses were available in both proceedings, and that the issues were not the same, the motion was overruled by the Trial Examiner. Respondent then renewed an application filed previously with the Regional Director for subpoenas and was informed that this was receiving consideration by the Board in Washington. Respondent also moved for the dismissal of the entire pro-
ceedings and the abandonment of the hearing on the
3002 grounds of undue prejudice, etc., by the Board but this motion was denied. Respondent then moved that para-

graphs 5 and 6 of the complaint be stricken from the record and this motion was likewise denied.

During a recess a deputy sheriff of Lake County, Illinois, served upon the Trial Examiner and the Board's attorney in the Federal Building, at Waukegan, an alleged injunction order and writ issued by the Circuit Court of that County ordering the Board to refrain from its hearing until the conclusion of the proceedings in the Circuit Court concerning the alleged violation of the injunction of that Court by certain employees during the said seizure of the respondent's buildings in February, 1937. Accordingly the hearing was continued from time to time until the approaching completion of said proceedings rendered it convenient for respondent's counsel to appear before the Trial Examiner. Respondent later moved for the dismissal of so much of the complaint as was inconsistent with the order and decreed entered by the Circuit Court in the above mentioned case. The motion was denied.

At the conclusion of the presentation of the case for the Board, respondent moved that all evidence concerning failure to reinstate employees be stricken because of insufficient evidence regarding their discharge. This motion was denied. Respondent then moved to strike the testimony of Art Holm, Sr., which motion was taken under advisement. Respondent also moved for a dismissal of the entire complaint and its written motion to this effect was written into the record on a stipulation. This motion was made both in whole and also in several parts. On many of these parts the Trial Examiner reserved rulings. However, he overruled those divisions of the motion which requested the dismissal of testimony and complaint regarding failure to reinstate employees, concerning employees who participated in the seizure of respondent's buildings, concerning employees offered re-
3003 employment by the respondent, concerning paragraph 12 of the complaint, concerning the employment of Alfred Johnstone, concerning the solicitation of employees to return to work as individuals, concerning the attempts to dominate the formation of a labor union, and concerning the violations of the Act which respondent urged had become moot by reason of the organization of the Rare Metal Workers Union. The motion for the dismissal of the complaint as a whole was denied. On those parts of the motion for which rulings were not made, rulings were reserved by the Trial Examiner until the end of the hearing and at that time

he again reserved rulings stating that they could be better embodied in the findings and conclusions of the Intermediate Report which would deal with the entire matter comprehensively rather than by individual rulings.

At various places in the record it is shown that objections were made to the taking of certain testimony or the asking of certain questions but the ruling of the Trial Examiner is not shown, although the record itself indicates that the questions were asked and the testimony was admitted. In all such cases the Trial Examiner overruled the objections and allowed the testimony.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact.

I. The Respondent.

1. The respondent, namely the Fansteel Metallurgical Corporation, is a New York corporation with offices at New York City and also at North Chicago, Illinois, where its only plant is located. It controls four subsidiary corporations and is and has been engaged in the extraction, refinement, manufacture, sale and distribution of certain nonferrous rare metals, and products thereof, including especially tantalum, columbium, tungsten, molybdenum, caesium and rubidum. Among other fabricated products, it manufactures contact points for ignition systems, tantalum parts for chemical and rayon industries, battery chargers, molybdenum and special alloy wires for vacuum tubes, etc. It maintains a large research laboratory for further development of processes and products. Its engineers are engaged in careful blueprinting of products and assist its own sales organization which operates throughout the country.

2. The respondent is the only manufacturer of some of its products and in the manufacture of all of its products has few competitors inasmuch as the industry is limited. The value of its products during the calendar year of 1936 was approximately $1,050,000. On February 17, 1937, it had 311 employees of whom approximately 76 were engaged in ad-

ministrative, supervisory, laboratory, and engineering functions.

3. Some of the raw materials required by respondent are mined and purchased in Australia and other foreign countries; others in different states of the United States. Likewise, its products are sold and transported throughout the United States and to foreign countries. It was stipulated that approximately 70 per cent of the raw materials used by the Corporation originated in states other than Illinois and in foreign countries, and that approximately 70 per cent of the finished product is shipped, largely by mail and express, into states other than Illinois and into foreign countries. It is thus evident that approximately 70 per cent of the raw materials reaches the plant at North Chicago only through interstate commerce and that 70 per cent of the products is sold only through interstate commerce.

3005

II. The Union.

4. The respondent's president testified that up until September 1, 1936, there had been no attempts from any source to organize the employees of the respondent and had been no labor difficulty or disturbances of any kind until said date. From testimony of the employees, it would appear that such had been the condition up until about July of 1936, and that during this period an open shop had been maintained at the plant, without any attempt at organization, either from within or without.

5. A few craftsmen had belonged to craft unions of the American Federation of Labor but this did not affect the respondent's labor situation. During this period supervisory officials mixed freely with the production employees and laborers at company social functions; employees were allowed to make their individual complaints and desires known to the managerial staff of the company.

6. During June of 1936 some dissatisfaction began to be felt by some of the employees and particularly so because of certain recommendations made for the cutting department by alleged "efficiency experts". During July of 1936 some of the employees took steps to form a labor union. On July 21, 1936 temporary officers and committeemen were elected. On August 5, 1936, the officers were made permanent, were officially installed, and the union was considered by its members as being in effect.

7. On August 14, 1936, additional officers were elected and a charter was presented to the local organization of employees. The membership drive was conducted under the guidance of Mr. Meyer Adelman, Field Directors for the Steel Workers Organizing Committee of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and employees signed applications for membership
3006 in said Amalgamated Association through the Steel Workers Organizing Committee. The charter issued to the Union was dated July 24, 1936, and designated the Union as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America (Board's Exhibit #16). There was not attached to the charter, and Lodge 66 does not have, a copy of the constitution or by-laws of the said Amalgamated Association nor of its own local organization. Mr. Adelman testified that the constitution and by-laws of the Amalgamated Association were in the process of being revised.

III. The Unit Appropriate for Collective Bargaining.

8. The Union officers testified that eligibility extended to all production workers of the respondent (P. 144 et seq.) Office help, managerial employees, laboratory men, engineers, and persons with authority to hire and fire were excluded. These persons were on a salary basis while all members of the Union work on an hourly pay basis or on a piece-work basis.

9. The respondent's answer admitted, in effect, that such would be the appropriate unit for collective bargaining except for the inclusion of maintenance employees. This exception involved approximately 2 carpenters, 2 millwrights, 2 electricians, 2 steam-fitters, 1 machine oiler and 2 helpers. (Art Holm, Sr.'s testimony). However, it is found that maintenance employees should be included in an appropriate unit, and the appropriate unit includes the production employees of the respondent, as outlined in the preceding paragraph.

10. Carl Swanson, financial secretary of Lodge 66, testified (p. 2174, 2175) that on September 10, and September 21, 1936, the Union had 90 or 91 members. The cards for these members were introduced as Exhibits 18 and 19 for the
3007 Board and were later replaced by lists of the signers. Respondent examined these cards during the hearing. By these cards applicants accepted membership in the A. A.

of I. S. & T. W. of N. A. and designated that organization as their representative for the purposes of collective bargaining.

11. Swanson also testified (P. 159) that the number of respondent's employees eligible for membership on September 10 and 21, 1936, was "not over 160" but his recollection was not based on any substantial evidence and his testimony on other matters as given at that time was subsequently modified. However, Kondrath, the Union president, reached a similar figure (P. 2145) by stating that he counted the time cards in the respondent's rack just before September 10 and found 181 cards from which he deducted 20 foremen and othe employees whom he did not consider eligible, which left 161 men as eligible. His deductions were made on the basis of general principles and of a list of men authorized by the respondent to requisition materials. He did not remember the names of all the men deducted.

12. However, the respondent produced these identical cards at the hearing (Ex.'s 43, 44). A count indicated that there were 206 cards on September 10, 1936 from which 11 were deducted for foremen. However, of the remaining 195 cards it would seem that 7 more should be deducted (Holm, Collier, Aigner, Mack, White, Hall and Zene) because of non-employment at that time or supervisory functions (P. 2418 et seq.). An additional 2 employees (Lodesky and Sustersech) were ill and never returned to work. This would make 186 employees in the appropriate unit on September 10, 1936. Respondent's Exhibit 25 indicates 186 hourly production employees on that date. For September 21, 1936, respondent's time cards, excluding foremen, total 197 (Resp. Ex. 45), but from these cards 3 deductions (Worklin, Morgan and 3008 McCann) should be made in addition to the 9 indicated for September 10, which leaves a net total of 185 which is the lowest figure obtainable for September 21. Respondent's Exhibit 25 indicates 189 for that date.

13. It is thus apparent that the Union would need at least 94 members in order to have a majority on September 10, and at least 93 or 94 members for a majority on September 21. It had not more than 91 members on these dates and thus did not have a majority of employees in the appropriate unit on these dates.

IV. Unfair Labor Practices.

A. Interference with rights of employees.

Statement against the Union on September 10, 1936.

14. During the early part of August 1936, employees Kondrath, Swanson, Ruck, and Dreyer (members of a temporary committee of the Union), conferred with President Aitchison and Messrs. Troxel, Dow, and Henry, officers of the respondent, seeking permission to put up on the company's bulletin board a notice of the meeting of the Union called for August 5, 1936. This conference resulted in a discussion of the reasons for the organization of a union at the plant and the desirability of the same. The company refused to grant the use of its bulletin board for the union notice, although union articles from newspapers were put on the board at different times. The refusal was not based upon any lack of space on the bulletin board, nor any similar reason.

15. On September 10, 1936, employee Kondrath, president of Lodge 66, asked A. J. Anselm, superintendent of the plant, to meet with the Union's grievance committee of twelve members. Mr. Anselm asked that the number be cut down and that the committee be confined to members who had been 3009 with the plant for five years or more (P. 268, 269). The committee met during lunch hour and the number was reduced to six, namely: Kondrath, Swanson, Ruck, Dreyer, Galbavy, and Latz.

16. The committee presented a contract (Board's Exhibit #12) proposed for the company's and the Union's approval, which provided for improvement in certain working conditions, for recognition of the Union on all matters affecting its members, for membership in the Union by all the employees, and for direct payment to the Union from the company of dues for the employees.

17. Mr. Anselm read the contract carefully and then remarked that there wasn't anything in it that could not be granted eventually "except one thing, union recognition" (P. 188); that "the company didn't want to recognize any outside union, or any union that had outside influences" (P. 195-6); that it was the policy of the company not to recognize an outside union (P. 210); that "he could do even better but not in that form of a contract, meaning that type of

contract with the Amalgamated." He said that "the management could never see it; that is, it is an outside union; that they would never accept it as the collective bargaining agency in that particular plant" (P. 270). Swanson (P. 321) and Dreyer (P. 378) testified similarly. Respondent offered no contradictory evidence.

18. Mr. Anselm thus stated that the company would consider and eventually grant improvements in working conditions but that it would not ever consider or grant recognition of the Union. He attempted to justify this position by calling attention to the "check-off" provision in the contract as proposed and by stating that the company did not want to compel its employees to join the Union, nor to compel the payment of dues to the Union. However, it is significant that Mr. Anselm did not propose a contract or any arrangement which would have eliminated the "check-off" system and provided for union recognition. It is likewise significant that he did not question the representation by the Union, or the committee, of a majority of the respondent's employees. Instead, he suggested an Employee Representation Plan and gave to the committee for distribution throughout the factory copies of the plan of the American Steel and Wire Company of Waukegan (Board's Exhibit #13), which he intimated (P. 273) would be acceptable to the company.

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19. By said refusal to negotiate with the union leaders and in particular by said announcement of the respondent's policy never to consider or grant recognition of the Union, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

Statement against the Union on September 21, 1936.

20. On September 21, 1936, the negotiation committee of the Union, with Mr. Meyer Adelman, an organizer, called at the plant for a conference, pursuant to arrangements thought to have been made previously. They were shown into Mr. Anselm's office; on his arrival, Ed. Ruck introduced Mr. Adelman to him. Anselm became hostile, demanded Adelman's card, and asked how he had gotten in. On Adelman's reply that he had come in with the committee and had no card other than the committee itself, Anselm said: "Well, I am not going to meet you. I am not going to meet anybody with you." (P. 232). To the committee Anselm said: "He is

not on my payroll. Therefore, I don't want to have any discussion with him." (P. 274). Anselm then ordered, and perhaps pushed (P. 243), Adelman out of the office. He was "very excited and angry and wanted to know who brought him in. We said nobody particularly, except the committee." (P. 275). This evidence was not controverted by the respondent.

3011 21. After Mr. Adelman's ejection, Mr. Anselm denied any knowledge of an appointment with the committee and the men returned to the shop. The Union had prepared a contract which eliminated the closed-shop and check-off provisions previously objected to by Anselm and provided for a check-off for Union members. This was admitted as Board's Exhibit #17; Mr. Swiren, counsel for respondent, stated it was presented to the company on September 10, 1936 (P. 327), but it was never signed. It was not presented on September 21.

22. In view of the September 10th announcement, this incident of September 21 is a dramatic restatement and enforcement of the company's policy of oppossition to the Union and refusal to meet with it. By said ejection of the Union's representative and reannouncement of the company's policy never to negotiate with or recognize the Union, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

Office memoranda against collective action.

23. On about September 22, 1936, respondent distributed to all its employees in "inter-office envelopes" two documents. One (Board's Exhibit #14) stated: "The management will not sign * * * any agreement which has for its objective the virtual control of the relations of the company and its various employees. * * * Management reserves the right to discontinue the services of any whose work, abilities or general conduct is not in keeping with the best interests of the business and its employees as a whole."

24. The other document (Board's Exhibit #15) was entitled: "A Plan of Employee Representation Which Has Been Pronounced Successful in a Large Number of Plants." This plan provided for employee election of representatives, for committees containing an equal number of employee

and of management representatives, for employee com-
3012 plaints to be heard by these committees and ultimately by the company's president and then referred to arbitration in case no agreement could be reached. There was no provision for dues and apparently no power for the employee representatives to do anything except receive and adjust complaints.

25. In the light of the preceding events, the issuance of these documents constitutes another announcement of the respondent's policy against a union of its employees. By said distribution during September, 1936, to its employees of statements of the company's policy and the company's desires against the organization of its employees into a union for collective bargaining, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

Circulation of petitions against the Union.

26. On September 10, 1936, superintendent Anselm talked with employees Fagan, Dreyer, and Daluga about the contract presented that morning by the Union committee. Fagan testified (P. 544) that Anselm asked him to quit the Union, saying it would be forgotten in two years, and that he wanted to break up the C. I. O. Dreyer testified he heard Daluga and Anselm talking about the former quitting the Union. Anselm denied these statements, but did admit circulating petitions among the employees and getting 125 signatures in favor of the employee representation plan (P. 2123 et seq.) Several foremen helped in this. Respondent did not controvert evidence that acting foreman Hall told employee Zelnick: "You might as well sign up. * * * The Company will never recognize the outside union anyway," (P. 1320) nor that when Hall was talking with Steve Luczo, the latter's boss, Mr. Schardt told him: "Steve, you are better off if you sign for the company union." (P. 1335).

3013 27. The petitions were destroyed by the management; the representation plan was not established. But the campaign of the company again showed its hostility toward Lodge 66. By said circulation of petitions and statements to employees against the formation of a union for collective bargaining, the respondent has interfered with, restrained and coerced its employees in the exercise of the

rights guaranteed in Section 7 of the National Labor Relations Act.

Membership in National Metal Trades Association.

28. On August 17, 1936, respondent applied for membership in the National Metal Trades Association. Its application was accepted by resolution of the Association on March 24, 1937, and respondent is now a member, and is governed by its constitution, by-laws and principles.

29. The Declaration of Principles of the Association provide: "While disavowing any intention to interfere with the proper functions of labor organizations; we will not admit of any interference with the management of our business. * * * This association will not countenance a lock-out, unless all reasonable means of adjustment have failed; neither will the members of this Association deal with striking employes as a body." The by-laws and constitution require members to notify the Association of disagreements or demands of employees "likely to lead to collective action on their part" and provide for the assumption of the defense of the dispute by the Association. Once this defense is so assumed, the Association has complete charge.

30. By said application for, acceptance of, and maintenance of membership in the National Metal Trades Association and subscription to the principles of that Association against the recognition of and the dealing with employees collectively and as a body, the respondent has interfered
3014 with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

Coercion through espionage.

31. The evidence that respondent employed Alfred Johnstone through the National Metal Trades Association from August 18 to about December 1, 1936, as a "confidential operative" for the purposes of espionage against the Union, and used him as such, is so overwhelming that little analysis is needed here.

32. Respondent claimed and its president, Mr. Aitchison, testified (P. 417) that Johnstone was represented and was hired as an expert in plant production problems, in the effi-

ciency of plant supervision, and in the efficiency of tool and machine equipment. But this is made absurd by the testimony of the office manager of the National Metal Trades Association, qualifying Johnstone as "an old time machinist, and quite an elderly man". Outside of machinist and tool and diemaker, his only known experience was with the Corporations Auxiliary, a detective agency (P. 487). He was known as a "confidential operative" (P. 478). Even as a workman, he was considered by his foreman to be "very poor. He could not do the work. * * * The man was not mechanic enough." (P. 2067). It was thus apparent that Johnstone was not qualified as an efficiency expert, nor even as a mechanic. He was qualified as a detective and hired for that purpose.

33. Mr. Aitcheson testified he needed Johnstone to report on the foremen and plant conditions because "there was a natural reluctance on the part of the workmen to talk about their foremen and about conditions * * *" (P. 420). He said Johnstone's reports (all of which were destroyed) related primarily to transfers of supervisory personnel, (P. 459, 470) and to improvements in working conditions, i. e., hot water in washrooms, better ventilating system, new 3015 toilets, etc. (P. 461). Yet Mr. Aitcheson's previous testimony of June 10 (P. 121 et seq.) indicates no such need, because he was then personally familiar with his men and his shop conditions. He said: "I do not think there has been a day that I have been at the plant, but what I have spent at least a half an hour around the grounds, or in more than one part of the plant, and it has always been easy for anybody to talk to anyone, behind the machines, or in the yard, or in the office."

34. Johnstone joined the Union, was very much interested in the meetings; attended them; inquired as to the number of members; suggested on several occasions that the Union strike. To Aitcheson he submitted at least four reports on union activities, giving the names of the officers and the speakers. All reports were destroyed by Aitcheson immediately upon his receiving and reading them.

35. Respondent's testimony regarding Johnstone was not only inconsistent but was false in at least one instance. In answer to a question as to whether it was necessary for respondent to pay the National Metal Trades Association for Johnstone's services, Mr. Aitcheson replied: "It was not, to the association; it was to Johnstone." He then testified

they paid Johnstone enough in addition to his plant earnings to make a total of $200 per month. Immediately thereafter Mr. Abbott (the Association's office manager) testified that the Association rendered monthly invoices to the respondent charging $225 for Johnstone's services and giving credit for his earnings. The company then remitted to the Association and from this amount the Association paid Johnstone enough to make his total of $200 per month and kept $25 per month for its own services (P. 488). Respondent did not controvert this testimony.

36. By said employment and use of a confidential operative for the purposes of espionage against the Union, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Sec-
3016 tion 7 of the National Labor Relations Act.

Discrimination regarding conditions of employment.

37. During the first part of November, 1936, John A. Kondrath, president of the Union and a machinist whose normal duties were in the tool shop, was called to the office and told by plant superintendent Anselm: "You are to work over here from eight o'clock until four o'clock, and during the noon hour you can go and eat your dinner any place you want to, except visiting inside of the plant." (P. 587). He was then shown his place where a lathe and drill press had been located. He was told that when there was nothing to be done, he could read. Magazines were furnished. Thereafter he was paid for the noon hour period in addition to his regular pay for working periods.

38. But respondent's counsel produced from Kondrath the following characterization of his new job: (P. 592, 595) "I wasn't free * * * I meant, when I said I wasn't free, that I wasn't allowed, like the rest of the working men in the shop * * * If I needed a tool, I had to ask Mr. Schultz to go over and get it for me, or if I wanted a wiping rag or something, I couldn't go in there and get it for myself, but I had to ask for service. * * * I was there all alone. * * * (My) chief objection to that job was that (I) was lonesome."

39. Respondent's verified answer stated that Kondrath was transferred "to assist in the development and improvement of machines and machine parts." There was not one iota of evidence to support such a contention, and it was clearly untrue. The above testimony was not contradicted

by respondent and clearly indicates a limitation of Kondrath's duties and a discrimination as to the tenure of employment and other conditions of employment.

40. By said segregation and limitation upon the customary freedom in the work of John Kondrath, respondent has, 3017 by discrimination in regard to hire or tenure of employment or other terms or conditions of employment, discouraged membership in a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

B. Refusal to bargain collectively

The Union's majority on February 17, 1937

41. On February 17, 1937, the Union had 154 members, according to testimony of its financial secretary (P. 160, 2175). Board's Exhibits 18, 19 and 20 give the names of 164 employees who signed cards (Board's Exhibit 11) accepting membership in the Amalgamated Association and authorizing the S. W. O. C., its agents or representatives to act for them as a collective bargaining agency. Respondent's Exhibit 41 lists eight employees (and testimony adds thereto employee Leskovec) who had left the company before February 17 by way of death, lay-off, or discharge. Although many of these employees have not paid dues, nevertheless there is no evidence indicating that the remaining 155 employees in any way revoked their agency before February 17, 1937.

42. On this date respondent had a total of 315 employees (Respondent's Exhibit 25), of which 239 were hourly employees in the appropriate unit as described above. Those who had designated the Union as their representatives for collective bargaining thus constituted 65 per cent of the employees in the appropriate unit.

The refusal to bargain on February 17, 1937.

43. At about 9:00 A. M. on February 17, 1937, the bargaining committee met plant superintendent Anselm in his office (P. 277 et seq.). The men told him they were the bargaining committee, representative of the plant, and they would like to have union recognition and would like to meet the man- 3018 agement. Anselm answered that that was not necessary, that the company did not want to recognize any

outside union. The men then noticed president Aitcheson going to his office and asked to see him. Anselm conferred with him and reported: "Nothing doing. It stands as it is, everything."

44. At 2:00 P. M. the committee returned for a second conference and Anselm reported: "It is still the same. We can't recognize an outside union. If you fellows want to call it as a shop committee, why, we will give you collective bargaining, but under the leadership of outsiders, and the Amalgamated Association of Iron, Steel and Tin Workers, we will not." After some discussion, the committee withdrew; the company's policy stood. Respondent did not attempt to deny or explain this testimony.

45. The production workers, including maintenance workers, but excluding office help, laboratory men, engineers, managerial employees, and persons with authority to hire and fire, employed by the respondent, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act.

46. A majority of said employees had designated the S. W. O. C., its agents or representatives, and more particularly, as such, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment and other conditions of employment. On and at all times since February 17, 1937, the said Lodge 66 has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3019 47. Said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America attempted on February 17, 1937, to bargain collectively with respondent, as exclusive representative of respondent's production workers, including maintenance workers, but excluding office help, laboratory men, engineers, managerial employees and persons with authority to hire and fire, in respect to rates of pay, wages, hours of employment and other conditions of employment.

48. The respondent did on February 17, 1937, refuse to bargain collectively with said Lodge 66 as exclusive repre-

sentative of respondent's production workers, as described above, in respect to rates of pay, wages, hours of employment and other conditions of employment.

C. The discharges and cessation of operations.

49. As a direct result of the respondent's refusal to negotiate, the bargaining committee held a meeting and decided to hold the plant as a protest against respondent's refusal to enter into collective bargaining. The machines were shut off, foremen and women were told to go home; non-sympathetic employees were allowed to go. Early in the evening Mr. Anselm and Mr. Swiren, plant superintendent and counsel, respectively, for respondent, appeared in the yard and, in the name of the company, ordered the employees out of the buildings. On their refusal, Anselm and Swiren announced in loud voices that all the men then holding the buildings were then and there discharged. No offer was made to negotiate with the Union.

50. On February 18, 1937, respondent obtained from the Circuit Court of Lake County, Illinois, an injunction order and writ which were posted and read at the plant; on refusal of the men to evacuate, a writ of attachment was likewise obtained and served. The men refused to submit to arrest.

3020 51. Early on February 19, a large force of deputy sheriffs attacked the buildings in an effort to dislodge the workers. They used gas bombs, clubs and a battering ram, but were repulsed by the employees who threw spools, bolts, nuts, bottles of sulphuric acid and similar small articles. The men continued to hold the buildings and received food, bedding, stoves and similar supplies from their friends outside. A few pipes inside the buildings burst from freezing; some of the machines rusted; small articles were moved about and used for articles of defense. But no malicious damage was done to the plant or equipment.

52. Early on February 26, a contingent of deputy sheriffs again attacked the buildings and, after a violent battle, succeeded in overcoming the men and ejecting them from the building. Respondent then began to clean up the building, replace broken windows, employ personnel, and commence production again. On March 1, 1937, it had about 34 to 40 employees on hand; by March 8 about 100 employees, or 40 to 50 per cent of normal; by March 12 it was at approximately normal production. It also pushed the prosecution of the in-

junction and contempt cases in the Circuit Court of Lake County, Illinois, and obtained an opinion, decree, and order (Board's Exhibit 42 and Respondent's Exhibits 1 and 2) fixing and sentencing to jail various men found guilty of holding the buildings in violation of the Court's injunction.

53. On February 25, 1937, respondent sent to Art Holm, Sr. a registered letter notifying him of his discharge "effective immediately". Board's Exhibit 35 and testimony indicated his position might have been abolished, but the verified answer and verified amendment thereto state the reason to have been insubordination and inefficiency. Testimony showed that he had been lax in his work and unsympathetic with his superiors at least as far back as January 15, 1936, and probably for much longer. He was an old employee. Yet respondent did not discharge him during that time but
3021 instead discharged him at a time when the plant was not even operating and when Holm was taking an active part in union activities. He was by nature an outspoken man both to his superiors and associates; on the stand he testified: "I naturally took sides—I always take sides with the laboring man, the laboring man's side. I always take his side. I am a laboring man myself." (P. 638). It thus appears that although Art Holm, Sr. did not do effective and responsive work for respondent, nevertheless he had not done so for years, and this was not the reason for his discharge on February 25. The real cause of his discharge and failure to get reinstatment was his active sympathy with the Union.

54. Said Art Holm, Sr. was discharged by A. J. Anselm, an agent of the respondent, on February 25, 1937, and has since been refused employment by respondent for the reason that the said Art Holm, Sr. joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

55. By said discharge and refusal to employ said Art Holm, Sr., respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has also by said discharge and refusal discouraged membership in the labor organization known as said Lodge 66.

D. Coercion through reinstatement of employees individually

56. From about February 26 until at least March 12, 1937, respondent contacted and employed both old and new person-

nel, with individual offers of reemployment. Employees
3022 were approached at their homes, at the plant, or by
phone through foremen, straw-bosses, a forelady and
in some cases (Wells, Crump, Small) by so-called "loyal"
employees. All such contacts were made with individuals;
the union was ignored completely; informal offers of rein-
statement were made to the employees conditioned on their
return to work. Back pay for the inoperative period of the
plant was offered. Some raises were given. Many employees
accepted these offers and the back pay, but many of the Union
members remained loyal to the Union and refused to return.
Of those who did not get reemployment, respondent's amend-
ment to the answer names 22 who were offered reinstatement;
the evidence proves 17 received offers and indicates there
were many others who were not involved in the hearing.

57. During this period when respondent was approaching individual employees, including at least 17 strikers, with offers of reinstatement as individuals, the Union was still demanding recognition and collective reinstatement. It remained on strike, maintained a picket line, and a striker's roll. It asked the company directly and through mediators for recognition and collective bargaining and was refused. It urged Union members to refuse reemployment until the Union was recognized and the group as a whole was reinstated.

58. The affirmative action of respondent in seeking out those employees it wanted back not only indicated to others the futility of applications by them for work, it also formed part of respondent's campaign to break the Union. By refusing to recognize or negotiate with the Union and at the same time enticing back individual members with offers of back pay and raises, it attacked the heart of collective action.

59. By approaching individual employees and offering to them individual reinstatements, with offers of back pay and
increases in pay in many instances, during a period
3023 when the Union was attempting to bargain collectively
on these same matters, the respondent has interfered
with, restrained and coerced its employees in the exercise of
the rights guaranteed in Section 7 of the National Labor Relations Act.

E. Refusal to bargain collectively

60. On March 3, 1937, employees Swanson, Latz and Dreyer asked respondent, in writing, (Board's Exhibit 25 A) to discuss with them, as the Union's committee, the question of

collective bargaining and recognition of the Steel Workers Organizing Committee as the sole bargaining agency for its employees. This committee represented a majority of the workers at this time. Nevertheless respondent refused recognition and refused to bargain with the Union's committee. It declined to discuss the matter orally and stated its refusal in a letter which is self-explanatory (Board's Exhibit 26).

61. On March 5, 1937, the same Union committee presented respondent with a proposal for recognition of the Union for the purpose of collective bargaining for its members (Board's Exhibit 26A). The Union still represented a majority of the employees. No Union members had presented resignations of their memberships, nor cancelled their authorizations for collective bargaining, although some had returned to work. Again the company refused recognition and negotiation, calling attention to its previous refusal and to its original position. The remarks at the conference were taken down by a stenographer (Board's Exhibit 27) and the refusal to bargain was set forth in another letter. (Board's Exhibit 28). These documents are self-explanatory.

62. On March 18, 1937, John F. Harris volunteered as mediator and mailed to respondent an offer (authorized by the Union) to remove the pickets if the company would recognize Lodge 66, refrain from discriminating against its 3024 members, and select a committee to discuss mutual differences. Respondent claimed it never got the letter and rebutted the presumption of receipt.

63. It has been found above that the production employees of respondent, including maintenance workers, but excluding office help, laboratory men, engineers, managerial employees and persons with authority to hire and fire, constituted an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act; that a majority of said employees have designated the S. W. O. C. and their representatives, and more particularly Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, a labor organization as defined in the Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment and other conditions of employment; that on and at all times since February 17, 1937, the said Lodge 66 has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with the respondent.

64. The said Lodge 66 attempted on March 3, 1937, and again on March 5, 1937, to bargain collectively with the respondent as exclusive representative of respondent's production workers (as above described) in respect to rates of pay, wages, hours of employment and other conditions of employment. The respondent on March 3, 1937 and March 5, 1937, refused to bargain collectively with the said Lodge 66 as exclusive representative of respondent's production workers (as above described) in respect to rates of pay, wages, hours of employment and other conditions of employment.

F. Discrimination in tenure of employment.

Refusal to reinstate certain eleven employees.

65. The pleadings indicate and the evidence shows that the eleven people named below have not been reinstated 3025 by respondent since the reopening of its plant. Respondent's answer, and amendment thereto, state that "it affirmatively requested (the people named below, among others) to return to work and resume their duties and that they refused so to do." This is the reason given for their non-reinstatement.

66. However, as pointed out in Finding 56, supra, these offers were made to employees as individuals during the time the Union representing these individuals was on strike and negotiating for recognition and collective bargaining. Acceptance of the offers necessarily involved withdrawal of support from the Union's activities; for this reason they were refused. When Lindberg was offered his job, he replied: "No, there is a strike on." (P. 811) At the hearing he said he was still on strike. Arvo Romppaine refused his offer because: "I considered myself a striker there. * * * I didn't want to go back to work without union recognition." (P. 808). Robert Pratt refused because they didn't recognize the Union, and said: "I never went through a picket line in my life and I am getting too old now to start with it." Bessie Luczo admitted on cross-examination she would not have gone back, if offered reemployment, because: "I would be scabbing if I went back." (P. 1174).

67. Such was the attitude of the others. All were members of the Union. Some had participated actively in the strike. All realized that the offers were conditioned upon

their abandonment of union activities and involved a renunciation of their rights of collective bargaining; they considered such offers to be refusals to reinstate on a union basis. At least one of those who accepted such an offer interpreted it likewise, saying, when asked if he had resigned from the Union: "Well, I guess I have, because I went back to work." (P. 1764).

68. The employees receiving such "offers" and not yet reinstated are as follows:

3026 Roy Brown
Herman Latz
Otto Latz
Clarence Dreyer
Eric Lindberg
George Mondro
Frank Moxey
Robert Pratt
Isabelle Recktenwald
Edward Schuman
George W. Smith

69. The eleven employees last above named have been refused employment by the respondent for the reason that they joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

70. By said refusal to employ the said employees, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said employees, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Respondent's refusal to reinstate certain thirty-one employees.

71. The pleadings indicate and respondent's stipulation, marked as Respondent's Exhibit 7, states, and also the evidence shows that the thirty-one people named below have not been reinstated by the respondent since the reopening of its plant in March of 1937. Respondent's answer and amendment thereto stated that these employees were not reinstated because of their participation in the violence and allegedly unlawful seizure of the company's buildings, because of their discharge for proper cause and because of the abolition of

certain jobs in respondent's plant. However, there was no evidence indicating in any way the abolition of the jobs
3027 of those hereinafter named, so that the only alleged reason for their non-reinstatement is their participation in seizure of the company's property and their discharge for the same. This participation was proven.

72. However, the evidence indicates conclusively that respondent did actually reemploy, with back pay and with some raises, a substantial number of those participating in the seizure, or sit-down strike. All of the production workers called by respondent as witnesses (six in number) were in the sit-down and were reemployed. Respondent's letter of March 3, 1937 (Board's Exhibit 26) announced: "We are giving favorable consideration to the applications for reemployment filed by a number of these men (who) participated. * * * in the violent seizure of our plant." At least eleven other witnesses testified they were in the sit-down strike and received offers of reinstatement which they refused. Respondent's president released to the Waukegan News-Sun an announcement (Board's Exhibit 34) saying that he had sent out approximately 238 checks to employees "who have returned to work" for their back pay during the inoperative period of the plant.

73. Respondent's stipulation filed as Respondent's Exhibit 7 listed on pages 8, 9 and 10, 94 employees who participated in the seizure of the company's plant. Of these 94 employees, respondent stipulated that 59 men have not been reinstated since the reopening of the plant, but that 35 of the 94 people, or 37 per cent of the total, have since been reemployed by the respondent. It is thus clear that respondent did not have a rule against reinstating employees who participated in the alleged seizure of its buildings, inasmuch as it employed over one-third of these people. Respondent's plant superintendent Anselm verified this conclusion by his testimony: "I employed a lot of people who seized and held the plants." (P. 1964). It therefore appears that participation in the seizure and retention of the buildings was not respondent's real reason for its failure to reinstate these employees.

3028 74. All of these men were members of the Union; all were active enough to participate in the strike and to remain loyal afterwards; some were officers and committee members; this was known to respondent's agents. It therefore appears that the reason for their non-reinstatement was not that participation in the seizure of the buildings, because

other participants were hired; the reason was their continuing sympathy with the Union and its activities.

75. With the exception of Fred Hensley who has been ill, these men have been able and willing to work ever since the disturbance. Those herewith concerned are:

Steve Ark	Steve Luczo
Nick Bankowisch	Paul Makovec
Joseph Chudy	Nate Mogel
W. D. Crump	Frank Museck
John Cudith	Anton Nagode
Charles E. Fulkerson, Jr.	Merritt Pratt
Frank Furlan	Bartol Puntarich
Angelo Galbavy	Joseph Richveis
John Grom	Andrew Rode
Fred Hensley	Alvar Romppaine
Tony Kancilja	Ed Ruch
Edward Kaucic	John Starovich
John Kondrath	Alan White
Frank Latz	Frank Zelenick
Joseph Lima	Mike Zelenick

76. The thirty employees last above named have been refused employment by the respondent for the reason that the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

77. By said refusal to employ the said employees, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of 3029 the National Labor Relations Act, and by said refusal to employ said employees, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Refusal to reinstate certain former employees.

78. The pleadings indicate and the evidence shows that, in addition to the employees named above, four other employees were not reinstated by the respondent after it reopened its plant in March, 1937. Respondent in its verified answer stated they were not hired because of participation in

the violent seizure of the buildings, etc. In respondent's verified amendment to its answer it again gave this reason and then also gave the additional reason that it had affirmatively offered these men reemployment which was refused by them. It is difficult to understand how respondent could set up a rule barring all participants from reemployment and at the same time offer those participants that reemployment. It is more difficult to understand how respondent's president could swear on oath to the truthfulness of both reasons.

79. The evidence indicates that these four men did participate in the seizure of the buildings and did receive indirect "offers" of reemployment. But it is clear that the "offers" were really "refusals" and that participation in the seizure was not the reason for their non-reinstatement. It has been shown that the respondent's reason for not reinstating because of their participation in the alleged seizure and retention of its buildings was not the real reason for respondent's failure to reemploy. The inaccuracy of this reason applies in regard to the failure to reemploy the four employees herewith concerned, and is supported by the inconsistency of the reasons advanced for these four people in particular. All of the men herewith concerned belonged to the Union, participated actively in its affairs, and were known to respondent be-
3030 cause of their union activities. It is, therefore, clear that this Union membership and activity was the reason for respondent's not reinstating said employees.

80. The four employees concerned herewith are: John W. Jackoway, Arvo Romppaine, Luther Small, Paul Wells.

81. The four employees last above named have been refused employment by the respondent for the reason that the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

82. By said refusal to employ the said employees, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said employees, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Refusal to reinstate certain five employees.

83. The pleadings indicate and the evidence shows that, in addition to the foregoing employees, five girls have not been reinstated by the company since reopening its plant. Respondent's verified answer states these five girls (among others) were not reinstated "solely and exclusively by reason of their inefficiency". These girls are as follows: Fern Gartley, Evelyn Graimer, Vivienne Johnson, Tillie Mesec, Marguerite Seifert.

84. Respondent's evidence concerning Miss Graimer consisted of her supervisor's testimony, to wit: "I can't remember anything about her particularly, only that as working in a group, or working in team with two people, she was efficient, but I do not know what she could accomplish personally, 3031 alone, on some of the jobs that might be assigned here." (P. 1975) Regarding Misses Gartley, Johnson and Seifert, respondent introduced statistics showing them low in some aspects of their work. Their supervisor, Miss Atkinson, testified in general that they were inefficient. However, she said she had asked for the return of Tillie Mesec (P. 2027), thus refuting respondent's answer in this regard. Also Miss Seifert testified (P. 1214) that foreman Shultz telephoned her about 11 o'clock at night and said they would call her back when they needed her, thus casting doubt on the inefficiency charge concerning her.

85. However, respondent refuted completely the inefficiency charge by its verified amendment to the answer in which its president stated on oath that it had "affirmatively requested (the above named girls and others) to return to work and resume their duties and that they refused so to do." Clearly respondent would not affirmatively request employees to return to work and at the same time decide not to rehire those same employees "solely and exclusively by reason of their inefficiency". They were either good enough to rehire, or they were not. Both of respondent's statements were made on oath by its president; one of them must be false—perhaps both.

86. All of the girls belonged to the Union; all testified they had not been criticized because of their work. In most cases they thought their superiors knew of their union membership. Forelady Atkinson testified (P. 2024) that she didn't like the idea of an outside union: "We always got along without one,

and I didn't see any reason for one"; she thought it was not a good idea for the men to get tangled up with someone on the outside. This dislike of union membership seems to be the real reason for respondent's failure to reinstate the five girls named above.

3032 87. The five employees last above named have been refused employment by the respondent for the reason that the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

88. By said refusal to employ the said employees, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said employees, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Refusal to reinstate Bessie Luczo.

89. The evidence shows that Bessie Luczo was not reinstated. Respondent answered it was because of inefficiency, but introduced no supporting evidence. She testified that she had worked for respondent for one and a half years; had received two pay increases; had been told by her boss on February 17 that he would phone her to come back when everything was fixed up. There are no grounds for the inefficiency charge.

90. Although she did not join the Union until after the sit-down strike, nevertheless her father was among those holding possession of the buildings, and she quickly became an active member. At the hearing she testified she was recording secretary of the Union and that she would not have returned to work—if offered—because that would have been scabbing. These union activities were the reason for respondent's not reinstating her.

91. Bessie Luczo has been refused employment by the respondent for the reason that she joined and assisted a

3033 labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the

purpose of collective bargaining and other mutual aid and protection.

92. By said refusal to employ Bessie Luczo, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said Bessie Luczo, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Refusal to reinstate Bissonette and Fellens.

93. The pleadings and evidence show that Joan Bissonette and Frances Fellens were not reinstated after the reopening of the plant. Respondent answered it did not reinstate them because of their inefficiency. Bissonette's statistics (P. 2002) show that on one grade of work she was 1/16 behind the "high girl" and in another grade ¼ behind the "high girl" for February. All averages rose in March, when she was not allowed to work. Her forelady testified "the quality of her work was fair, but she was very slow * * * and she needed supervision." (P. 2009) The figures indicate she wasn't the fastest girl, but she wasn't far behind and certainly not inefficient as to quality.

94. Frances Fellen's supervisor testified regarding her (P. 1974): "Well, I had her name down as being efficient when she was on piecework. * * * On hourly work * * * she did not seem to put forth her best efforts to my knowledge. I did not want her back for several reasons. It seemed like she was always agitating trouble. She seemed to make remarks about this one, and the other one, and I think when that tension is in the department, one can not do the 3034 work that is required of them." But she was never called in after they abolished piecework (P. 1978) and got little experience on the contact point assembly work done on an hourly basis. There was no opportunity for the supervisor to judge her on an hourly basis performance.

95. Fellens had worked for respondent for two years; joined the Union in August, 1936; had never been criticized for her work. Bissonette had worked nine months for respondent; it was her first job; she joined the Union in November, 1936; had never been criticized for her work. After the reopening of the plant, she telephoned her forelady

employees instead of former male employees. Respondent claimed a consequent reduction in costs (P. 1845; Respondent's Exhibits 21, 22). The evidence showed that the cost was reduced approximately 50 per cent, but that the wages of 75c per hour which the men had received were reduced to 40c per hour for the new women employees, which was raised to 45c per hour after they became experienced. This accounted for the savings, inasmuch as the women did about the same amount of work as the men employees, or perhaps somewhat less, for not more than 45/75 of the original pay (P. 1957). These pay reductions are the only substantial change in the work of this department. The jobs remained the same and were not abolished.

100. Respondent also claimed that these men were not reinstated because of their participation in the seizure of the plant. These men were identified with this seizure, but the falsity of this reason, as pointed out above for other employees, applies likewise to these men. Respondent did not exclude employees who had participated in the seizure
3036 of the plant; some other reason must explain its failure to reinstate these employees.

101. All these men belong to the Union; some of them were exceedingly active in the Union, including participation in the strike and in picketing. This was known to the respondent's agents. Furthermore, none of these men were given any consideration by the company for any other openings that might develop in other departments (P. 1962 et seq.) The disconnection of their services was desired. It is clear that the reason for the non-reinstatement of these men was not the abolition of their jobs, nor their participation in the seizure of the buildings, but was instead their membership and participation in the affairs of the Union.

102. The men herewith concerned are as follows:

Grinders	Spinners	Cutters
Ed Brunke	Frank Scheuer	Leo P. Daluga
Al Bunton	Elmer Luke	Harold Dreyer
Phil Graimer		Charles E. Fulkerson, Sr.
Stanley Grum		T. E. Fagan
Victor Hertel		William D. Magness
John Praski		

103. The thirteen employees last above named have been refused employment by the respondent for the reason that

the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

104. By said refusal to employ the said employees, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said employees, respondent has also discouraged membership in the labor organization known as Lodge 66 of
3037 the Amalgamated Association of Iron, Steel and Tin Workers of North America.

The Maintenance Department.

105. The pleadings indicate and the testimony shows that eleven employees in the maintenance department were not reinstated by the respondent after the opening of its plant in March, 1937. Respondent stated in its verified answer and amendment thereto that these men, hereinafter named, were not reinstated because of their participation in the seizure of the plant and also because their jobs were abolished. The falsity of the participation in the seizure of the plant as a reason for the failure to reinstate employees is as relevant in these instances as in those cases pointed out above. Respondent employed a substantial number of men who participated in the seizure and this was not the true reason for its failure to reinstate others.

106. Respondent's officials testified that a great deal of the work formerly performed by the maintenance department had been let out on contract to carpenters, electricians and others in order that respondent could procure these services with less effort and less cost than that required by the use of regular employees (P. 1854; Respondent's Exhibit 23). Although the evidence as to any actual savings arising from the use of contracts is exceedingly meagre, nevertheless it is not clear that respondent had any other reason for obtaining this work through independent contractors rather than through employees. Certainly it was shown that the work was not being performed by any other employees, either new or old, except for four men who had been retained for minor services.

107. However, no consideration was given any of these

men for any other vacancies that the company might have in its various departments, despite the qualifications and previous service of these men with the company. Plant superintendent Anselm said this lack of consideration
3038 was based upon their participation in the seizure of the company's buildings (P. 1962), but the falsity of this reason has already been pointed out above. All of these men likewise belonged to the Union and likewise were exceedingly active in its affairs. In fact, Carl A. Swanson and others of this group were leaders in the Union. These facts were well-known to the respondent. A number of new employees were hired by the company in different capacities throughout the department. Many of them had to be trained for their new work. The number of these new employees was not revealed, but the evidence was clear that the reason respondent did not give the men in this department preference or even consideration for these new jobs was their membership and participation in union activities. It is equally clear that at least some of these men could have been rehired in other positions, if the respondent had so desired. The employees herewith concerned are as follows:

Carpenters	Electricians
Andrew Anderson	Lester Crump
Ted Christianson	Vincent Ditmeyer
Eugene D. Hendee	Charles Warner
Art Holm, Jr.	
Oscar Johnson	Electrician's Helper
Carl A. Swanson	Jerome Camernicke, Jr.

Steamfitter
Fred Yaeger

108. The eleven employees last named above were refused employment and were discriminated against in the employment of personnel by the respondent for the reason that the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

3039 109. By said refusal to employ the said employees and by said discrimination against said employees in the employment of personnel, respondent has interfered with, re-

strained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Tool room employees.

110. The pleadings and the evidence are practically the same for five employees in the tool room department as for those in the maintenance department, as above discussed. Respondent stated that these men were not reinstated because of their participation in the seizure of the buildings, but this reason was false. Respondent stated that they were not reinstated for the additional reason that their jobs had been abolished because a great part of the work was being let out on contract (P. 1855). There was evidence to support this contention.

111. However, these men were likewise given no consideration for the vacancies that developed in different departments of the company and were filled by new personnel. The reason for their receiving no consideration for such openings was their membership and participation in union activities.

112. The men herewith concerned are: Raymond DuBois, Theodore Ohlson, Joseph Aigner, Joseph Petraitis, Harry H. Rayner.

113. The five employees last named above were refused employment and were discriminated against in the employment of personnel by the respondent for the reason that the said employees joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

3040 114. By said refusal to employ the said employees and by said discrimination against said employees in the employment of personnel, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

Lack of discrimination in non-reinstatements.

115. Respondent's answer stated that Joseph Hoff was not reinstated because he participated in the seizure of the buildings and abolition of his job. The evidence showed that he did not participate in the seizure. The amendment to the answer accordingly abandoned the above reason and substituted that of inefficiency. Such change of reasons by respondent is not seemly, but in this case was without prejudice.

116. Although Hoff joined the Union in August, 1936, nevertheless he was not active in it; he did not remain for the strike but left with employees "loyal" to the company. Furthermore, he was 74 years old and himself testified he was let go because he was too old. Such is found to be the reason.

117. Jasper Leskovec joined the Union in July, 1936; was laid off in November, and discharged in January, 1937. Jack Taylor was not a member of the Union during the strike, took no part in it but did join on March 11, 1937, at which time respondent had practically completed the employment of its personnel. The union memberships and activities of these two men were not the reasons for their non-reinstatement and there was no discrimination in this respect.

118. There was no evidence introduced concerning the reasons for discharge and/or non-reinstatement of the following employees:

3041 Virginia Butterfield
Gus Canclakes
George Kallio
David Nostell
Peter Skarbalus
Victor Weatherhead
Elsworth Peters

G. Domination of a labor organization.

119. Respondent's reemployment task was practically completed by March 12, 1937. By the first of April there came from an unknown source a sudden desire for an "independent union". A committee visited plant superintendent Anselm who said: "Under the labor act you employees have a right to (organize)." (P. 1463). Accordingly notices of a meeting were posted; on April 15 the meeting was held in building #14; about 200 employees attended and voted about 185 to 15 for an independent union. On April 17 application was made for an Illinois State charter of incorporation; on the 19th it was granted. In the meantime about 220 signatures were ob-

tained on petitions for membership in the new union. On the return of the charter, another meeting was held in building #14; nominations for permanent officers were made from the floor; subsequently ballots for officers were cast in boxes placed under the company's time clocks. A meeting was held later in May in Holy Church Hall; a fourth meeting was held in the North Chicago auditorium during June. Officers have been installed; some dues have been collected; by-laws have been adopted; a negotiating committee is being selected. On May 27, 1937, respondent signed a contract for exclusive bargaining with the independent union.

120. Respondent not only consented to the organization of its employees; it allowed the use of its bulletin boards for the April 15 meeting; it furnished 12 typed notices of the April 15 meeting for the bulletin boards and 300 mimeographed ballots (P. 1543). It furnished building #14 for the meeting. After the meeting the ballots were sealed and placed in the respondent's vault. Respondent then loaned em-
3042 ployee Sylvin $10.00 (P. 1473) with which to apply for a corporation charter for the union. On the return of the charter, respondent again supplied typed notices and the use of company bulletin boards to advertise the meeting where officers were nominated (P. 1457). Respondent again furnished building #14 for the meeting-place. For the election of officers respondent again furnished its bulletin boards to post the slate of nominees and notices of the election. Ballots were printed or mimeographed. Johnson said Berkquist handled that (P. 1476) but Berkquist said they were obtained by Johnson, Sylvin and Weddell. The election was held on respondent's property; ballot boxes were installed under the clocks in buildings #3 and #5. After the voting, the ballots were placed in respondent's safe (P. 1480).

121. Foreman Simms told employee A. R. Johnson "that he hoped the organization would go through O. K.; that he would like to see it work out". (P. 1488). The membership reached 226 out of 256 eligibles by May 26 (P. 1532); on that date the new union presented its cards to respondent's counsel who had them photostatted, declared "that undoubtedly they had a majority, and under the law they deserved recognition, and we would recognize them." (P. 1531). Respondent did so (P. 1536). Thus in about one and a half months the "independent union" organized, got 88 per cent of the appropriate unit into its membership, and won recognition from the employer.

122. The by-laws (Board's Exhibit 42) designate the new union as Rare Metal Workers of America, Local #1; any member is allowed to "bargain as an individual with the employer as to rates of pay and wages or working conditions, or any other matter pertaining to his or her employment"; yet "any member * * * who shall feel aggrieved (about any of the above) shall submit such grievance in writing to * * * the Executive Board (of the union) whose action shall be
3043 final." A 75 per cent vote of the entire membership is required for a strike, and: "This organization cannot affiliate without a vote of 75% of all the members thereof."

123. In themselves such facts may not seem significant; but they become indicative when contrasted with the history of Lodge 66 which was denied the use of respondent's bulletin boards, was ejected from respondent's offices, was repeatedly confronted by hostile statements and a fortiori would never have conceived of such gratuities as mimeographing, typing, vault space, hall space, and a loan of money to pay the incorporation filing fee. The men of Lodge 66 were spied upon by a professional "confidential operative" and intimidated by arbitrary infringements upon the liberties of their president. The Rare Metal Workers were welcomed into the office and given repeated favors. Lodge 66 had to fight seven and a half months to get a 65 per cent majority of the workers and was then refused even an audience by respondent; Rare Metals got 185 supporters by merely posting company-prepared notices on company bulletin boards for "a day or two days", (P. 1466) and received instant "recognition" from respondent. Lodge 66 has outside affiliations; Rare Metals has practically guaranteed respondent freedom from "outside influences" by its by-laws.

124. Respondent has instigated, guided and dominated the Rare Metal Workers Union in its formation and in its administration; it has contributed financial and other support to it and to its leaders. It is therefore found that the respondent, by its officers and agents, formed and sponsored the Rare Metal Workers of America, Local #1, as a labor organization of its employees. The said Rare Metal Workers of America, Local #1, is a labor organization within the meaning of the National Labor Relations Act.

125. The respondent is dominating and interfering with the administration of a labor organization of its employees by the activities hereinbefore set forth, and is contrib-
3044 uting financial and other support to said labor organization.

V. Interstate Commerce.

126. As indicated above, respondent sold products in 1936 totalling $1,050,000 in value. Approximately 70 per cent of these sales, and also 70 per cent of its purchases leave and reach its plant only through interstate commerce.

127. The unfair labor practices of respondent described above caused a complete shut down of respondent's plant from February 17 through 26. "There was a stoppage of shipping into the plant and shipping away from the plant, except for the stuff that had been ordered, and that was stopped."

128. It is therefore found that the activities of the respondent set forth above, occurring in connection with its operations as described above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent by (1) its statement of September 10, 1936, against the Union; (2) its statement and action of September 21, 1936 against the Union; (3) its office memoranda issued against the Union in September, 1936; (4) its circulation of petitions against the Union on and after September 10, 1936; (5) its membership in the National Metal Trades Association; (6) its espionage against the Union through a professional "confidential operative"; (7) its discrimination regarding the conditions of work of the Union president, John A. Kondrath; (8) its refusal to bargain collectively on February 17, 1937, and thereafter; (9) discharging and refus-
3045 ing to employ Art Holm, Sr.; (10) its coercion through the reinstatement of employees as individuals; (11) its refusal to bargain collectively on March 3, 1937, March 5, 1937, and thereafter; (12) its discrimination in tenure of employment through its refusal to reinstate certain employees, to wit: Roy Brown, Herman Latz, Otto Latz, Clarence Dreyer, Eric Lindberg, George Mondro, Frank Moxey, Robert Pratt, Isabelle Recktenwald, Edward Schuman, George W. Smith, Steve Ark, Nick Bankowisch, Joseph Chudy, W. D.

Crump, John Cudith, Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, John Grom, Fred Hensley, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joseph Lima, Steve Luczo, Paul Makovec, Nate Mogel, Frank Museck, Anton Nagode, Merritt Pratt, Bartol Puntarich, Joseph Richveis, Andrew Rode, Alvar Romppaine, Ed Ruch, John Starovich, Alan White, Frank Zelenick, Mike Zelenick, John W. Jackoway, Arvo Romppaine, Luther Small, Paul Wells, Fern Gartley, Evelyn Graimer, Vivienne Johnson, Tillie Mesec, Marguerite Seifert, Bessie Luczo, Joan Bissonette, Frances Fellens, Ed Brunke, Al Bunton, Phil Graimer, Stanley Grum, Victor Hertel, John Praski, Frank Scheuer, Elmer Luke, Leo P. Daluga, Harold Dreyer, Charles E. Fulkerson, Sr., T. E. Fagan, William D. Magness, Andrew Anderson, Ted Christianson, Eugene D. Hendee, Art Holm, Jr., Oscar Johnson, Carl A. Swanson, Lester Crump, Vincent Ditmeyer, Charles Warner, Jerome Camernicke, Jr., Fred Yaeger, Raymond DuBois, Theodore Ohlson, Joseph Aigner, Joseph Petraitis, Harry H. Rayner; (13) its domination and interference with the labor organization known as Rare Metal Workers of America, Local #1, and by contributing financial and other support to it, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3046 2. Respondent by dominating and interfering with the labor organization known as the Rare Metal Workers of America, Local #1, and by contributing financial and other support to it, as set forth in the above findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent by discharging and refusing to employ Art Holm, Sr., and by refusing to employ Roy Brown, Herman Latz, Otto Latz, Clarence Dreyer, Eric Lindberg, George Mondro, Frank Moxey, Robert Pratt, Isabelle Recktenwald, Edward Schuman, George W. Smith, Steve Ark, Nick Bankowisch, Joseph Chudy, W. D. Crump, John Cudith, Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, John Grom,

Fred Hensley, Tony Kancilja, Edward Kaucic, John Kondrath, Frank Latz, Joseph Lima, Steve Luczo, Paul Makovec, Nate Mogel, Frank Museck, Anton Nagode, Merritt Pratt, Bartol Puntarich, Joseph Richveis, Andrew Rode, Alvar Romppaine, Ed Ruch, John Starovich, Alan White, Frank Zelenick, Mike Zelenick, John W. Jackoway, Arvo Romppaine, Luther Small, Paul Wells, Fern Gartley, Evelyn Graimer, Vivienne Johnson, Tillie Mesec, Marguerite Seifert, Bessie Luczo, Joan Bissonette, Frances Fellens, Ed Brunke, Al Bunton, Phil Graimer, Stanley Grum, Victor Hertel, John Praski, Frank Scheuer, Elmer Luke, Leo P. Dalugra, Harold Dreyer, Charles E. Fulkerson, Sr., T. E. Fagan, William D. Magness, Andrew Anderson, Ted Christianson, Eugene D. Hendee, Art Holm, Jr., Oscar Johnson, Carl A. Swanson, Lester Grump, Vincent Ditmeyer, Charles Warner, Jerome Camernidge, Jr., Fred Yaeger, Raymond DuBois, Theodore Ohlson, Joseph Aigner, Joseph Petraitis, Harry H. Rayner, and thus discouraging membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Sec-
3047 tion 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

4. Respondent by refusing to bargain collectively on February 17, 1937, March 3 and March 5, 1937, and at all times between and since said dates, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from dominating or interfering with the formation or administration of the Rare Metal Workers of America, Local #1, or any other labor organization, and from contributing financial or other support to said

Rare Metal Workers of America, Local #1, or any other labor organization.

3. Respondent cease and desist from discouraging membership in any labor organization, and more particularly Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, by discrimination in regard to hire or tenure of employment or any other term or condition of employment.

4. Respondent cease and desist from refusing to bargain collectively with the said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, the representative of its production employees, including maintenance employees, but excluding office help, laboratory men, engineers, managerial employees, and persons with authority to hire and fire.

3048 5. In order to effectuate the policies of the Act respondent take the following affirmative action:

a. Withdraw all recognition from the Rare Metal Workers of America, Local #1, as representative of its employees for the purpose of dealing with the respondent concerning wages, rates of pay, hours of employment or conditions of work, and disestablish said Rare Metal Workers of America, Local #1, as such representative;

b. Offer to Art Holm, Sr. immediate and full reinstatement to his former position as foreman of the maintenance department, or equivalent employment, on a full-time basis, with all rights and privileges previously enjoyed;

c. Make the said Art Holm, Sr. whole for any loss of pay he has suffered by reason of his discharge by payment to him of a sum equal to that which he would normally have earned as wages at his position as foreman of the maintenance department during the period from the date of his discharge to the date of such offer of employment, less the amount earned by him during such period;

d. Offer to the employees hereinafter named immediate and full reinstatement to their respective former positions, or equivalent employment on a full-time basis, with all rights and privileges previously enjoyed, namely: Roy Brown, Herman Latz, Otto Latz, Clarence Dreyer, Eric Lindberg, George Mondro, Frank Moxey, Robert Pratt, Isabelle Recktenwald, Edward Schuman, George W. Smith, Steve Ark, Nick Bankowisch, Joseph Chudy, W. D. Crump, John Cudith, Charles E. Fulkerson, Jr., Frank Furlan, Angelo Galbavy, John Grom, Fred Hensley, Tony Kancilja, Edward Kaucic,

John Kondrath, Frank Latz, Joseph Lima, Steve Luczo, Paul Makovec, Nate Mogel, Frank Museck, Anton Nagode, Merritt Pratt, Bartol Puntarich, Joseph Richveis, Andrew Rode, Alvar Romppaine, Ed Ruch, John Starovich, Alan White, Frank Zelenick, Mike Zelenick, John W. Jackoway, Arvo Romppaine, Luther Small, Paul Wells, Fern Gartley, Evelyn Graimer, Vivienne Johnson, Tillie Mesec, Marguerite Seifert, Bessie Luczo, Joan Bissonette, and Frances Fellens, 3049 Ed Brunke, Al Bunton, Phil Graimer, Stanley Grum, Victor Hertel, John Praski, Frank Scheuer, Elmer Luke, Leo P. Daluga, Harold Dreyer, Charles E. Fulkerson, Sr., T. E. Fagan, William D. Magness;

e. Make said employees whole for any loss of pay they have suffered by reason of the refusal to reemploy them by payment to them, respectively, of sums equal to those which they normally would have earned as wages at their respective positions during the period from the date of the reopening of the plant, namely, March 12, 1937, to the date of such offer of employment, less the amount earned by them during such period;

f. Offer employment to the following named employees to the extent of positions which have been or are being filled by persons employed since February 17, 1937, and for which the following named employees are qualified, and place those not so employed on a priority list to be given preference for such positions as may become available and for which they may be qualified: Andrew Anderson, Ted Christianson, Eugene D. Hendee, Art Holm, Jr., Oscar Johnson, Carl A. Swanson, Lester Crump, Vincent Ditmeyer, Charles Warner, Jerome Camernicke, Jr., Fred Yaeger, Raymond DuBois, Theodore Ohlson, Joseph Aigner, Joseph Petratis, Harry H. Rayner;

g. Upon request bargain collectively with Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, as the exclusive representative of its production employees, including maintenance employees, but excluding office help, laboratory men, engineers, managerial employees, and persons with authority to hire and fire, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment;

h. Post notices in conspicuous places in its plant stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the Rare Metal Workers of America, Local #1 is so disestablished; (3) the names of those not reem-

ployed but placed upon the priority list described above; and (4) that such notices will remain posted for a period
3050 of at least thirty (30) days from the date of posting;

i. File with the Regional Director for the Thirteenth Region on or before ten (10) days from the date of this report a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless within ten (10) days from the date of this report the respondent notifies said Regional Director in writing that he will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the complaint be dismissed in so far as it pertains to the following named people: Joseph Hoff, Jasper Leskovec, Virginia Butterfield, Gus Canclakes, George Kallio, David Nostell, Peter Skarbalus, Victor Weatherhead, Elsworth Peters, and Jack Taylor.

Tilford E. Dudley,
Trial Examiner.

Dated: September 2, 1937.

3051 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

APPLICATION FOR EXTENSION OF TIME FOR FILING EXCEPTIONS.

Now comes Fansteel Metallurgical Corporation, Respondent in the above entitled cause, by Levinson Becker Peebles & Swiren, its counsel, and moves that the time of the Respondent for filing exceptions to the intermediate report of the Trial Examiner be extended for a period of ten (10) days to and including September 27, 1937.

In support of this motion, the Respondent respectfully shows that:

1. The intermediate report of the Trial Examiner was served on the Respondent and its counsel on September 7, 1937, and unless the extension is granted the exceptions will be required to be filed with this Board no later than September 17, 1937.

2. The hearings before the Trial Examiner were exten-

(Atkinson) and asked if she could have her job back, but Atkinson "said I couldn't, and I asked her why; I asked her if my work was all right, and she said it was O. K.; and then I asked her what the reason was, and she said—let me see now—something about my attitude, or something like that."

96. Both supervisors were concerned more about "attitudes" than efficiency. These were apparently union attitudes and, judging by the inaccuracy of the evidence concerning inefficiency of the other girls, it seems clear that union membership was the reason for the non-reinstatement of Misses Fellens and Bissonette. Joan Bissonette and Frances Fellens have been refused employment by the respondent for the reason that they joined and assisted a labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

97. By said refusal to employ Joan Bissonette and Frances Fellens, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by said refusal to employ said Joan Bissonette and Frances Fellens, respondent has also discouraged membership in the labor organization known as Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

3035 The Contact Department.

98. The pleadings and the evidence show that the men in the respondent's Contact Department were not reinstated by the respondent after the reopening of its plant in March, 1937. Respondent's pleadings and testimony state that these jobs were abolished, and that the men could not be reinstated because their jobs were no longer in existence. This resulted from an alleged reorganization of the entire department for the purpose of reducing costs and improving quality of work. The positions so abolished were formerly filled by six grinders, two spinners and eight cutters (Respondent's Exhibit 20).

99. However, the jobs were not abolished as claimed. The work of that department continued to be performed and the functions of the jobs remained approximately the same. The difference was that the positions were filled by new women

3055 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

STATEMENT OF EXCEPTIONS OF FANSTEEL METALLURGICAL CORPORATION TO INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD.

Levinson, Becker, Peebles & Swiren,
Sidney H. Block,
Counsel for Fansteel Metallurgical Corporation, Respondent.

3056 * * (Caption—XIII-C-80) * *

Fansteel Metallurgical Corporation, Respondent in the above entitled proceeding, does hereby take exception to the Intermediate Report of the Trial Examiner, Tilford E. Dudley, dated September 2, 1937, and served upon the Respondent September 7, 1937, and to all of the findings, conclusions and recommendations contained in said Intermediate Report, to certain of the Trial Examiner's rulings on motions and objections and to other parts of the record, as follows:

3057 I.

No Finding Respecting the Principal Issue.

Exception No. 1. Upon the undisputed evidence, the Trial Examiner should have found that fifty-nine men named in the complaint were discharged for participating in the illegal seizure and retention of Respondent's plant, that such discharge was for good and sufficient cause, and that accordingly the complaint should be dismissed with respect to such men. The charges upon which the Complaint in this proceeding was issued, grew out of a so called "sit-down" strike during which the two key buildings of the Respondent's plant were occupied by ninety-four employees from February 17, 1937, to February 26, 1937.

On the day of the seizure, a group of employees representing themselves to be the Bargaining Committee of Lodge 66 of the Amalgamated Association of Iron, Steel and Tin

Workers of North America (hereinafter called "Lodge 66") had two conferences with the management respecting collective bargaining, the results of which were not satisfactory to the committee. Fifteen minutes after the close of the second conference (about 2:30 o'clock in the afternoon), without any notice or warning, this committee and certain other employees seized Buildings 3 and 5 of the Respondent's plant and thereby stopped all of the Respondent's operations. They evicted the foremen and other employees from the buildings and locked, wire and barricaded the doors from the inside. A formal, specific demand for return of possession made by the Respondent that evening was rejected by the men, and the Respondent thereupon announced that all of the men occupying the buildings were discharged for their seizure and retention thereof. With eight or ten exceptions,
the Respondent did not, at the time of the discharge,
3058 know the identity, number or union affiliations, if any,
of the men in occupancy of the buildings.

The next morning, upon complaint of the Respondent and after hearing in which the men in the buildings and Lodge 66 were represented by counsel, the Circuit Court of Lake County, Illinois, issued an injunctional order, finding that the seizure of the buildings was illegal and that the men in occupancy thereof had been discharged, and directed that the men vacate the buildings and return possession to the Respondent. The men within the buildings refused to comply with the writ of injunction (issued pursuant to the order) which was duly served upon them. The Court thereupon issued a writ of attachment directing the Sheriff to arrest the men holding the buildings and bring them before the Court to show cause why they should not be punished for contempt. The men again refused to comply, and, after resisting with violence, they were finally evicted by the Sheriff on February 26, 1937. Thirty-nine of these men were subsequently found guilty of contempt by the Circuit Court of Lake County for disregarding the Court's injunction and were accordingly fined and sentenced to jail. At the same time, a final decree was entered in the injunction proceedings, without objection on the part of Lodge 66 or the individual defendants, confirming the previous finding that the plant seizure was illegal and that the men in occupancy of the buildings had been duly discharged for seizing the buildings and permanently enjoining the further interference with the Respondent's possession of its plant. No appeal was ever taken from that final decree.

These facts are undisputed, being the subject of written stipulation between the Respondent, the Board and Lodge 66 and admitted in evidence as Respondent's Exhibit 7.

The damage occasioned by the men during this occupancy of the buildings was repaired immediately after their
3059 eviction, and operations were resumed early in March, 1937. When the plant reopened, many of the old employees returned to work. Some refused and, in their places, new employees were obtained. A number of men and women who were asked to return to work declined to do so.

Most of the persons recommended for reemployment or reinstatement by the Intermediate Report either participated or aided and abetted in the illegal seizure and retention of the Respondent's plant. With respect to such persons, the issues raised by the pleadings in this proceeding were:

1. Was the conduct of the men who seized the key buildings of the plant sufficient cause for their discharge by the Respondent?

2. Was the Respondent under any legal duty to reemploy any of the men discharged for such plant seizure?

3. Was the Respondent under any legal duty to recall to work any of the persons who aided and abetted in the illegal retention of Respondent's plant?

The Intermediate Report completely ignores the first issue and, in dealing with the second and third issues relating to reemployment and reinstatement, fails to give any consideration to the prior discharge or the illegality of the seizure and retention of the plant. The Trial Examiner should have made definite findings, first, whether Respondent was justified in discharging the men who had seized its plant and, secondly, whether, if such discharge was proper, Respondent was under any duty at any time thereafter to reemploy such men.

Exception No. 2. The Trial Examiner should have found that the Respondent was under no duty to offer reemployment or work to men who had been discharged for participating in the plant seizure or the group of men who re-
3060 mained on the outside and aided and abetted in the illegal retention of the plant. There is no evidence to support the Trial Examiner's contrary finding that the discharge of the former group and the illegal conduct of the latter group were not the real reasons for the Respondent's failure to offer reemployment or work but that the real reason was the union membership and activity of both groups of men. The

only basis for that finding is the Trial Examiner's repeated citation of the fact that some of the men who had been discharged for participating in the plant seizure had been reemployed. Such of the men who were discharged for the plant seizure on February 17, 1937, who filed application for reemployment were rehired by the Respondent without condition or limitations and without any reference to their previous or future union activities.* Such of the men who were discharged on February 17th, who did not apply were not reemployed and comprise the principal group recommended for "reinstatement" by the Intermediate Report. The record shows no statements or acts of discrimination against any of these men or any refusal to entertain applications from them for reemployment; indeed, more than fifteen of them (including the original vice-president of Lodge 66 and other leaders) were affirmatively asked to file applications and refused so to do. That no discrimination was actually practiced is demonstrated by the fact that the Respondent, upon resuming operations, reemployed or put to work sixty-one members of Lodge 66, some of whom were officers and members of the Bargaining Committee and others of whom were outstandingly active in union affairs,—all without condition or limitation of any kind. Of the group in question, those who
3061 were asked to file applications for reemployment refused to do so; the others testified that if they had been asked, they would not have returned to work. Upon this record, the Trial Examiner erred in finding that the Respondent discriminated against these employees and the discharged employees by reason of union membership or activity, and further erred in recommending their reinstatement with back pay; such findings, conclusions and recommendations are without any authority in law or in fact.

II.

Preliminary Motions.

Exception No. 3. The Regional Director and the Board erred in denying the motion of the Respondent for an ad-

* The only three who applied and were not rehired were: Joe Petraitis, whose position in the tool room had been abolished (Rec. 1896), seventy-four year old Joseph Aigner, whose work was combined with that of another man (Rec. 2035-8), and Ed Ruck, who did not apply until six weeks after operations had been resumed and his position had been filled (Rec. 1897).

journment of the date of hearing for at least ten (10) days from June 7, 1937 (Bd. Ex. 1-C) in order to avoid conflict with pending proceedings before the Circuit Court of Lake County, Illinois, and to afford the Respondent a reasonable opportunity to prepare for hearing as provided by the National Labor Relations Act.

Exception No. 4. The Trial Examiner erred in overruling the motion made at the opening of the hearing on June 7, 1937, for an adjournment of the proceedings until after the completion of the pending trial before the Circuit Court of Lake County and an interval of a few days for the purpose of according the Respondent an opportunity to prepare for hearing before the Board. The failure to grant such motion unduly prejudiced the Respondent and constituted a denial of its constitutional right to due process of law.

Exception No. 5. The Board erred in denying the Respondent's application (Bd. Ex. 1-G) for subpoenas and subpoenas duces tecum and the repeated renewals of such
3062 application made to the Trial Examiner during the hearing. By reason of the refusal to issue such subpoenas, the Respondent was hampered and unduly prejudiced in the presentation of evidence and was prevented from adducing and presenting evidence in accordance with the National Labor Relations Act and the constitutional guarantee of due process of law.

(a) In the original application filed in advance of the hearing, the Respondent sought subpoenas and subpoenas duces tecum for the purpose of summoning witnesses to testify on, and to produce written and documentary evidence in their possession having a material bearing upon, the specific issues raised by the pleadings. Such application should have been granted immediately and an opportunity thereby afforded the Respondent to serve such subpoenas and summon such witnesses. After the hearing had been in progress more than a week, the Board entered an order denying, in its entirety, the Respondent's application for subpoenas.

(b) The application for subpoenas was renewed before the Trial Examiner at the opening of the hearing (Rec. 47, 48), and that renewal was likewise denied, as shown by Board's Exhibit 1-O. During the hearing, witnesses for the Board testified orally on matters contained in written records, which the Respondent sought to have produced by the subpoenas duces tecum requested in its application (Rec. 339-342). The Respondent thereupon requested, without avail, that the sub-

poenas be issued forthwith for use in cross-examining such witnesses.

(c) At the close of the Board's case, the Respondent again renewed its original application for subpoenas and subpoenas duces tecum (Rec. 1602) but no action was taken thereon.
3063 Such request was again renewed by the Respondent before closing its case and again without avail (Rec. 2448).

By reason of such refusal to issue subpoenas, the Respondent was hampered and unduly prejudiced in the presentation of its evidence and was deprived of an opportunity for full hearing, in violation of the due process provisions of the Constitution of the United States.

Exception No. 6. In the case of "Fansteel Metallurgical Corporation *vs.* Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, et al.," bearing General No. 37551, the Circuit Court of Lake County, Illinois, entered an order on June 8, 1937, and a final decree on June 9, 1937 (R. Ex. 1 and 2, respectively), adjudging that the retention of Respondent's plant by the men therein named was contrary to law and that such men were properly discharged for such seizure. Such adjudication is res adjudicata between the Respondent, Lodge 66 and the men named in said order and decree with respect to whom complaint is made herein. The Trial Examiner erred in overruling the Respondent's motion to dismiss the complaint in so far as it relates to the men named in the order and decree of the Circuit Court of Lake County. The denial of such motion is in disregard of the due process and the full faith and credit provisions of the Constitution of the United States.

III.

Findings in the Intermediate Report.

Exception No. 7. Finding 2 is erroneous. The Trial Examiner should have found that on February 17, 1937, the Respondent had 243 employees who were not engaged in administrative, supervisory, laboratory and engineering functions. (R. Ex. 25).

3064 Exception No. 8. In Findings 8 to 13, the Trial Examiner erroneously relies upon the oral testimony of union officers respecting their eligibility rules and their membership, notwithstanding (1) the indefiniteness and lack of uniformity in the testimony (Rec. 148, 156, 166); (2) the

refusal of Lodge 66 and its officers to produce the constitution, by-laws, articles of association, records or other regulations of such Lodge and of the Amalgamated Association of Iron, Steel and Tin Workers of North America from which such rules were drawn or wherein they are formulated and determined; and (3) the refusal of Lodge 66 and its officers to produce its membership books and records.

Exception No. 9. Finding 12 is erroneous in excluding from the roll of employees within the appropriate bargaining unit (a) employees on the regular payroll who, on the two days in question, were ill and, therefore, not actually at work, and (b) five employees who are paid on an hourly basis, work on production and have, in addition, simple supervisory duties without power of hire and discharge.

Exception No. 10. The Trial Examiner erred in failing to find as a fact that, during the entire period in which Lodge 66 was organized, was soliciting members among the employees of the Respondent and making demands upon the Respondent, no member of such Union was discharged, threatened with discharge, or in any way disciplined by reason of his membership in the Union or by reason of having engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Exception No. 11. The statements in Finding 14 with reference to the denial of the use of the bulletin board should be disregarded by the Board upon the ground that they are wholly immaterial. The Respondent was under no obligation to make available to Lodge 66 the use of its bulletin board or any other property of the Respondent.

3065 Exception No. 12. In Finding 17 the Trial Examiner should have found that the statements of Mr. Anselm during the meeting with the committee of Lodge 66 on September 10, 1936, with reference to union recognition and "outside unions" were made as an objection to the demand of Lodge 66, representing a minority of the employees, for a closed shop and check-off system, i. e., that all employees of the Respondent be required, as a condition of employment, to become members of said Lodge 66 and that the Respondent should "check-off" or deduct from the wages of all employees a fixed amount to be paid to Lodge 66 as dues, without regard to the views or desires of the individual employee. John Kondrath, President of Lodge 66, testified that Respondent's open letter of September 22, 1936, granted all demands "except recognition." That letter does not in any way mention

recognition but announces the Respondent's refusal to accept the closed shop and check-off system demands. The Trial Examiner should have found that the Committee regarded the term "union recognition" as including a closed shop and check-off system, and the testimony of the members of the Committee must be so construed. Findings 17 and 18 are contrary to the evidence.

Exception No. 13. Finding 19 is not supported by the evidence and is based on a consideration of oral testimony as to the contents of written records not produced and other incompetent evidence.

Exception No. 14. Findings 20, 21 and 22 are not supported by the evidence. The Trial Examiner should have found that Mr. Anselm made no appointment to meet Mr. Adelman or any other representatives of Lodge 66 and that Mr. Anselm's refusal to confer with Mr. Adelman September 21, was solely by reason of the fact that Adelman had entered Mr. Anselm's private office without permission and without arranging to come in in the conventional and
3066 regular manner; and that the committee of Lodge 66 recognized that that was the sole basis for the refusal by apologizing to Mr. Anselm for the intrusion (Rec. 287-9, 326).

Exception No. 15. In view of Finding 13, that Lodge 66 did not represent a majority of the employees of the Respondent on September 21st, as required by Section 9(a) of the National Labor Relations Act, the Respondent was not, as a matter of law, obliged to bargain with Lodge 66 as the collective bargaining agency of its employees, and accordingly Findings 20 to 22, both inclusive, are immaterial and should be disregarded by the Board.

Exception No. 16. Finding 23 is unfair in setting out distorted excerpts from Board's Exhibit 14.

Exception No. 17. The Trial Examiner erred in failing to find as matters of law and fact that:

(a) In and by its open letter of September 22, 1936, (Bd. Ex. 14) the Respondent engaged in collective bargaining with its employees and acceded to all demands made by the committee of employees on September 10th in the draft contract presented by them to Mr. Anselm, with the exception of recognition of Lodge 66 as the exclusive bargaining agency for all employees, the closed shop requirement that every employee be compelled to join Lodge 66 and the check-off system whereby the Respondent would be compelled to de-

duct from the wages of all employees, with or without their consent, an amount fixed by Lodge 66 as its dues.

(b) Under the provisions of the National Labor Relations Act, the Respondent was prohibited from recognizing Lodge 66 as the exclusive bargaining agency for all of its employees or entering into a closed shop and check-off system contract with Lodge 66, as the representative of less than a majority of its employees.

3067 Exception No. 18. Findings 26 and 27 are not supported by the evidence.

Exception No. 19. Findings 28, 29 and 30 are not supported by the evidence.

Exception No. 20. There is no evidence to support Findings 31 to 36, both inclusive.

Exception No. 21. There is no evidence to support Findings 37 to 40, both inclusive.

Exception No. 22. Finding 41 is not supported by the evidence. Lodge 66 and its officers refused to produce at the hearing, and the Board declined repeatedly to issue subpoenas duces tecum to compel the production of, the current membership records in order to determine the actual number of employees of the Respondent who were members of Lodge 66 and had authorized it to act as their bargaining agency on February 17, 1937.

Exception No. 23. Finding 42 is not supported by the evidence.

Exception No. 24. Findings 43 to 48 are contrary to the evidence and based upon a consideration of incompetent evidence. Lodge 66 and its officers refused to produce its current membership records in support of oral estimates and such refusal raises a presumption that, if produced, such records would disprove the officers' oral estimates. The Board did not proceed in this case under the provisions of Section 9 of the National Labor Relations Act. No proper evidence was offered as to membership on February 17, 1937, and no evidence whatever was offered as to subsequent membership.

3068 Discharge of Employees Participating in Illegal Seizure and Retention of Respondent's Plant.

Exception No. 25. Findings 49 to 52 are in part insufficient excerpts from the evidence and are in part contrary to the uncontradicted evidence. Upon the stipulation between the parties to this proceeding (R. Ex. 7) and the uncon-

tradicted evidence, the Trial Examiner should have found that:

(a) About 2:00 o'clock in the afternoon of February 17, 1937, certain of the employees of the Respondent ceased work and, with force and violence, took possession of Buildings 3 and 5 of the Respondent's plant and ordered and compelled the foremen and certain other employees, including women, to leave those buildings, all without previous notice or warning to the Respondent and without the permission or consent of the Respondent or any of its officers. Thereupon, such persons closed and barricaded the doors of said buildings from the inside and kept and retained possession of such Buildings 3 and 5 to the exclusion of the Respondent and its officers and agents until the morning of February 26, 1937.

(b) Buildings 3 and 5 are the key buildings of the entire plant of the Respondent, and the seizure and retention of such buildings resulted in the entire closing of the plant and the complete stoppage of all of its business operations.

(c) Approximately four hours following the seizure of Buildings 3 and 5, A. J. Anselm and Max Swiren, Plant Superintendent and counsel, respectively, of the Respondent, acting upon the orders of the President of the Respondent, and accompanied by the Chief of Police of North Chicago, Illi-
3069 nois, and a Deputy Sheriff of Lake County, Illinois, went to Building 3, and, after announcing their identity and authority, sought entrance into the building. Upon the refusal of those within the building to admit them, Mr. Swiren, acting upon the orders of R. J. Aitchison, President of the Respondent, passed into the building a written notice stating that the Respondent would appear on the following morning before Ralph J. Dady, presiding Judge of the Circuit Court of Lake County, Illinois, and institute proceedings with a view to obtaining an injunction directing the men to vacate the building. Thereupon, Messrs. Swiren and Anselm, acting upon the orders of Mr. Aitchison, requested the men to leave the building and, upon their refusal so to do, again acting upon orders from Mr. Aitchison, they announced that every man remaining in the building was discharged for the violent seizure and retention of the buildings. Thereupon, Messrs. Swiren and Anselm, Chief of Police Novak and Deputy Sheriff Ebler proceeded to Building 5 and went through the same procedure, made the same request and announcement with the same results, and, upon the refusal of the men within Building 5 to leave the building, announced that every man re-

maining in the building was thereupon discharged for the violent seizure and retention of the building.

(d) At the time of the discharge of the men in Buildings 3 and 5, their number, their identity and their union affiliations, if any, with eight or ten exceptions, were totally unknown to Mr. Aitchison, Mr. Anselm, or Mr. Swiren, or anyone connected with the management of the Respondent (no information concerning union membership ever having been submitted to the Respondent), and the discharge was a blanket discharge of all of the men then in occupation of the buildings.

3070 (e) The following men named in the Complaint participated in the seizure and retention of Buildings 3 and 5 on February 17, 1937, and were in occupation thereof at the time of the discharge aforesaid:

Joseph Aigner
Andrew M. Anderson
Steve Ark
Nick Benkovich
Roy Brown
Edward Brunke
Al Bunton
Jerome Camernick, Jr.
Ted Christianson
Joseph Chudy
Lester Crump
John Cudith, Jr.
Leo P. Daluga
Vincent Dietmeyer
Clarence Dreyer
Harold Dreyer
Raymond E. DuBois
Charles E. Fulkerson, Sr.
Angelo Galbavy
Phil Graimer
Stanley Grum
Eugene D. Hendee
Fred Hensley
Victor Hertel
Art Holm, Jr.
John W. Jackoway
Oscar Johnson
Edward Kaucic
Tony Koncilja
John Kondrath
Frank Latz
Herman Latz
Eric Lindberg
Steve Luczo
Elmer Luke
Nate Mogel
George Mondro
Frank Moxey
Frank Musech
Antone Nagode
Theodore Ohlson
Joseph Petraitis
John Praski
Merritt Pratt
Robert Pratt
Joseph Richveis
Andrew Rode
Alvar Romppaine
Arvo Romppaine
Ed. Ruck
Frank Scheuer
Edward Schuman
Luther Small
George W. Smith
Carl A. Swanson
Charles Warner
Paul Wells
Allen White
Fred Yaeger
Frank Zelenick

(f) The seizure and retention of the plant was contrary to the civil and criminal laws of the State of Illinois and
3071 was punishable under Section 376 of the Criminal Code of the State of Illinois commonly known as the "Intimidation Section" (R. Ex. 39).

(g) On the following morning, February 18, 1937, Respondent filed in the Circuit Court of Lake County, Illinois, its sworn Complaint reciting the violent seizure of the plant by certain employees, their refusal to surrender possession and their discharge as employees, and praying that an injunction may be entered requiring the removal from the premises of the men then in occupancy thereof and restoration of possession to the Respondent. Immediately upon filing of the Complaint, a hearing was had upon the application of the Respondent for an injunctional order, at which all of the defendants named in the Complaint appeared by their counsel and an injunctional order was thereupon issued by the Circuit Court of Lake County, Illinois, directing the men in occupancy of Buildings 3 and 5 immediately to vacate said premises and restore the buildings and contents thereof to the Respondent. At about noon on February 18, 1937, Lawrence A. Doolittle, the duly elected and acting Sheriff of Lake County, Illinois, accompanied by Thomas Kennedy, Chief Deputy Sheriff of Lake County, Illinois, and certain other deputy sheriffs, went to Buildings 3 and 5 and attempted to gain entrance thereto but were refused admittance to said buildings by the men in possession thereof. Thereupon, the Sheriff and his deputies read the writ of injunction through open windows in each of Buildings 3 and 5 to the men in occupancy of the buildings and passed copies into the buildings; that upon inquiry from the Sheriff, the men in the buildings informed him that they would not leave the premises.

(h) Thereafter, on the same day, upon the verified petition of the Respondent, the Circuit Court of Lake
3072 County, Illinois, issued a writ of attachment directing the Sheriff of Lake County, Illinois, to attach and bring before the bar of the Circuit Court the men holding possession of Buildings 3 and 5 to show cause, if any they had, why they should not be adjudged guilty of contempt for failure to obey the aforementioned injunctional order and writ of injunction and be punished therefor. Pursuant to said order, a writ of attachment issued out of, and under the seal of, the Circuit Court of Lake County, Illinois, on the 18th day of February, 1937, ordering and directing the Sheriff of Lake

County forthwith to seize certain named persons and all persons occupying said buildings and bring them forthwith before the Circuit Court of Lake County.

(i) On the morning of February 19, 1937, Lawrence A. Doolittle, the Sheriff of Lake County, Illinois, accompanied by Chief Deputy Thomas Kennedy and approximately one hundred deputy sheriffs, went to Buildings 3 and 5 of Respondent's plant and advised the men within such buildings of the issuance of such writ of attachment and requested such men so occupying the buildings to surrender themselves to the Sheriff and his deputies. The men then occupying Buildings 3 and 5 refused to comply with the request of the Sheriff, and thereupon the Sheriff and his deputies attempted to gain entrance into Buildings 3 and 5; that the efforts of the Sheriff and his deputies to gain entrance to Buildings 3 and 5 were repulsed by a barrage of missiles and acid (Rec. 1680-90, 1721-3, 1736-8, 1753-7, 1769-71, 1780, 1799), and thereafter the men within Buildings 3 and 5 continued to occupy such buildings until they were evicted by the Sheriff and his deputies on the morning of February 26, 1937.

(j) On the morning of February 26, 1937, Lawrence A. Doolittle, Sheriff of Lake County, Illinois, accompanied 3073 by Chief Deputy Thomas E. Kennedy and approximately fifty deputy sheriffs, again went to Buildings 3 and 5 of the Respondent's plant and attempted to gain entrance thereto for the purpose of enforcing the writ of injunction and the writ of attachment issued by the Circuit Court of Lake County, Illinois. The efforts of the Sheriff and his deputies so to gain entrance were resisted by the persons occupying the buildings, who again attacked the Sheriff and his deputies with a barrage of missiles and acid. Thereupon, the Sheriff and his deputies were compelled to use tear and emetic gas in order to evict said persons from Buildings 3 and 5 and by the use thereof were able to vacate the buildings and restore them to the possession of the Respondent.

(k) During the period from February 17, 1937, to February 26, 1937, certain of the men in occupancy of the buildings escaped from the buildings and others were permitted to leave by the remaining men in occupancy of such buildings.

(l) During the period from February 17th to February 26, 1937, copies of the Chicago and Waukegan daily papers were delivered twice daily to the men occupying Buildings 3 and 5 and practically all of such newspapers contained accounts of the occupation of Buildings 3 and 5 and many of

sive, requiring a period of approximately three weeks,
3052 during which time 2480 pages of testimony were taken and approximately 125 exhibits, many being extensive in scope and substantial in size, were admitted to evidence.

3. The intermediate report is 53 pages long and contains 128 findings in addition to the conclusions and recommendations of the Trial Examiner.

4. There are presented on this record numerous questions of fact and law, many of which have never before been considered in any reported decisions of the Board. Included among these are questions growing out of the violent seizure of the Respondent's plant by a group of employees who were discharged for such seizure and on whose behalf the charges in this proceeding were filed.

By reason of the matters and things set out above, the extension of time is necessary in order properly and adequately to present, for the consideration of the Board, the exceptions to the intermediate report on behalf of the Respondent.

Levinson Becker Peebles & Swiren,
Counsel for Fansteel Metallurgical Corporation, Respondent.

3054 Standard Form No. 14

Approved by the President
March 10, 1926

From BW:PG

Bureau National Labor Relations Board
Chg. Appropriation NLRB

Telegram

Official Business—Government Rates

September 10, 1937.

Levinson Becker Peebles & Swiren
One North LaSalle Street
Chicago Illinois

Re Fansteel The Board Has Denied Your Request For Extension Of Time For Filing Exceptions.

Benedict Wolf,
Secretary.

such stories made mention of the issuance of the injunctional order and the writ of injunction by the Circuit Court of Lake County, Illinois, and the unsuccessful efforts of the Sheriff of Lake County, Illinois, and his deputy sheriffs to carry out such order and writ on the morning of February 19, 1937.

The undisputed testimony further discloses that the issu-
3074 ance of the injunctional order, writ of injunction and writ of attachment was known to the men in occupancy of Buildings 3 and 5, had been discussed by them and had been maliciously and intentionally flouted and disregarded.

(m) The efforts of Lawrence A. Doolittle, Sheriff of Lake County, and his deputy sheriffs, on February 19, 1937, and February 26, 1937, to enforce the writ of injunction and writ of attachment issued by the Circuit Court of Lake County, Illinois, were, with force and violence, resisted by the men in occupancy of Buildings 3 and 5, including the men hereinbefore in Sub-paragraph (e) hereof named, and in such resistance they hurled at the Sheriff and his deputies, large quantities of heavy steel and iron missiles, including pipes, bolts, nuts, reamers, and tools, wire reels and small tools (Rec. 1680-90). Typical of such missiles are Respondent's Exhibits 10, 11 and 12, being, respectively, a wire-drawing spool about 5½ inches in diameter and weighing about 3 pounds, a sharp edged tool known as an "end mill" which is an inch and three-quarters in diameter and 8 inches in length, weighing about 4 pounds, and a smaller end tool weighing about a pound and a half. In addition to such missiles, the men in occupancy of the buildings directed fire hoses and chemical fire extinguishers fed from huge tanks against the Sheriff and his deputies and also poured sulphuric acid and threw quart bottles of sulphuric acid at the Sheriff and his deputies, all in an effort to keep them from enforcing the aforementioned writs of injunction and attachment (Rec. 1680-90, 1721-3, 1736-8, 1753-7, 1769-71, 1780, 1799). A number of deputy sheriffs were injured by the missiles and acid hurled at them through the windows by the men in occupancy of the buildings (Rec. 1732).

3075 (n) In the course of their illegal and violent seizure and retention and possession of Buildings 3 and 5, the men participating in such activity wilfully destroyed a substantial amount of property owned by the Respondent and otherwise seriously injured and damaged the Respondent. The physical destruction consisted of breaking windows, throwing and destroying small tools and parts, many of which were hurled through the windows, destruction of sulphuric

acid, destruction of forty to fifty thousand valuable tungsten contact points which were thrown at the deputies from the windows, burning out of two furnaces as a result of being allowed to cool rapidly, damage to interior of buildings from fomite and other chemicals contained in the fire extinguishers, and other physical damage occasioned by the use of the buildings for living purposes by some ninety men without adquate facilities therefor. Machinery rusted and was otherwise damaged by exposure and lack of proper care. The President of the Respondent, whose testimony was uncontradicted, computed the damage as follows: Damages to buildings, equipment and inventory, between $10,000.00 and $12,000.00; damage through loss of possession of the buildings by reason of continued fixed charges and overhead expense, $20,000.00; and damage by reason of loss of business, $30,000.00 (Rec. 1690, 1696-1701, 1834-38).

(o) All of the men who were in occupancy of Buildings 3 and 5 on the evening of February 17, 1937, including all of the men listed in Subparagraph (e) hereof, were discharged solely by reason of their violent and unlawful seizure of the Respondent's property and for no other reason whatsoever.

(p) In an order entered by the Circuit Court of Lake County on June 8, 1937 (Respondent's Exhibit 1), the 3076 following men were found guilty of contempt for refusing to vacate Respondent's plant as required by the writ of injunction, and fined and sentenced to jail therefor:

Steve Ark
Roy Brown
Edward Brunke
Al Bunton
Jerome Camernick, Jr.
Gus Canelakes
Joseph Chudy
Lester Crump
Vincent Dietmeyer
Clarence Dreyer
Harold Dreyer
Raymond E. DuBois
Angelo Galbavy
Stanley Grum
Art Holm, Jr.
George Kallio
Edward Kaucic
Tony Koncilja
John Kondrath
Frank Latz
Herman Latz
Frank Musech
Antone Nagode
David Nostell
Elsworth Peters
Merritt Pratt
Robert Pratt
Joseph Richveis
Andrew Rode
Alvar Romppaine
Arvo Romppaine
Peter Skarbalus
Luther Small
Carl A. Swanson
Charles Warner
Fred Yaeger
Frank Zelenick

(q) The work of the employees of respondent ceased on February 17, 1937, solely by reason of the illegal and violent seizure of buildings 3 and 5 of Respondent's plant by certain employees of Respondent, and, in no respect, did such work cease as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. No notice or warning was given to Respondent prior to the seizure of buildings 3 and 5 on February 17, 1937, and at no time during the occupancy of the buildings by the former employees of Respondent from February 17th to February 27th did such former employees or Lodge 66 on their behalf offer to withdraw from such buildings and return possession thereof to the Respondent upon any terms or conditions whatsoever.

3077 Exception No. 26. Findings 53, 54 and 55 are contrary to the evidence. The Trial Examiner should have found that:

(a) Art Holm, Sr., was properly discharged on February 25, 1937, as foreman of the maintenance department, for good cause. Holm was guilty of gross incompetence, inefficiency and insubordination, and the record discloses repeated instances of willful disregard of specific instructions from his superiors. At the time of his discharge, the officers of the respondent had under consideration the elimination of the maintenance department, and upon reopening the plant in March, 1937, the Respondent did reduce the department from eighteen men and a foreman to a force of one carpenter, one electrician and two helpers (Rec. 1853). As a foreman, Holm was ineligible for membership in Lodge 66.

(b) There is no evidence in the record to sustain the charge that Art Holm, Sr., was discharged because the Respondent suspected that he was a member of Lodge 66 or because he engaged in union activities.

During the hearing, while counsel were introducing evidence relating to the cause of the discharge of Art Holm, Sr., the Trial Examiner interrupted the proceeding and announced (off the record (Rec. 2337)) that the evidence sufficiently showed proper discharge of Holm and that it would be unnecessary for the Respondent to offer further evidence on that subject. Later in the same day, during a recess of the hearing (Rec. 2339), the Trial Examiner repeated such statements to counsel for the Respondent and confirmed his previous conclusion that the evidence already introduced was wholly sufficient to establish the proper discharge of Holm. The Re-

spondent relied upon such assurances and thereupon rested its case with respect to Art Holm, Sr. Respondent offers to make proof of said facts in such manner as the Board directs.

Findings 53, 54 and 55 are directly contrary to the con-
3078 clusions expressed by the Trial Examiner at open hearing and are not supported by the evidence.

Exception No. 27. Findings 56 to 59, both inclusive, are contrary to the evidence.

Exception No. 28. The Trial Examiner erred in failing to find that during the period from February 26, 1937, to March 12, 1937, the Respondent affirmatively requested the following persons named in Paragraph 11 of the Complaint to apply for reemployment or to return to work and resume their duties:

Roy Brown	Tillie Mesec
Clarence Dreyer	Robert Pratt
John W. Jackoway	Edward Schuman
Otto Latz	Peter Skarbalus
Eric Lindberg	George W. Smith
George Mondro	Arvo Romppaine
Frank Moxey	Luther Small
Isabelle Recktenwald	Paul Wells

Such offer was refused by all of said persons, who voluntarily absented themselves from the Respondent's plant and refused to resume their work. The Respondent's offer of reinstatement was made without any conditions whatsoever (Rec. 1891-2, 605-7, 608, 611, 621). Upon resumption of operations at or about March 12, 1937, sixty-one members of Lodge 66, some of whom had been previously discharged for cause, were reemployed or given work without any conditions respecting union membership, union activity, collective bargaining or any other concerted action among employees or any other conditions (Rec. 2110, 1891-2, 1396-1400, 1386, 1506).

Exception No. 29. Findings Nos. 60, 61, 63 and 64 are contrary to the evidence. The Trial Examiner should have found that:

(a) On March 3, 1937, Swanson, Latz and Dreyer, pur-
porting to act as a committee, requested in writing (Bd.
3079 Ex. 25-A) a conference to discuss with them as representatives of Lodge 66, the matter of collective bargaining and the recognition of the Steel Workers Organzing Committee as the sole bargaining agency for Respondent's employees. On that date, neither said Lodge 66 nor said Committee nor the Steel Workers Organizing Committee represented a majority of the employees of the Respondent.

(b) The Respondent's reply to the demand of March 3, 1937 (Bd. Ex. 25-A) expressly states that the bona fide membership of Lodge 66 was limited to a small minority of the employees and expressly calls attention to the fact that all persons who participated in the violent seizure of the plant on February 17, 1937, including the members of the Committee, had been discharged and were no longer employees of the Respondent. Such statements in the Respondent's reply were true, and Respondent was under no duty to recognize the Steel Workers Organizing Committee as the exclusive bargaining agency for its employees or to bargain with Lodge 66 or its Committee.

(c) On March 5, 1937, the same committee of Lodge 66 renewed its request for a recognition of Lodge 66 and a meeting for the purpose of collective bargaining without stating whether or not it had withdrawn its request for recognition of the Steel Workers Organizing Committee as the exclusive bargaining agency for all of Respondent's employees (Bd. Ex. 25-A). The Respondent thereupon replied that the request was different from the request of March 3, only in that Lodge 66 was being substituted for the Steel Workers Organizing Committee. There is no evidence that on March 5, 1937, Lodge 66 was authorized to represent any greater percentage of the employees than on March 3, 1937. Accordingly, the Respondent was under no duty to recognize Lodge 66 as
3080 the bargaining agency for its employees or for the members of Lodge 66 and was under no duty to bargain with Lodge 66 or its committee.

Alleged Refusal to Reinstate Certain Eleven Employees.

Exception No. 30. Findings 65 to 70 are contrary to the record evidence. The Trial Examiner should have found, with respect to the eleven persons referred to in such findings, that:

(a) Isabelle Recktenwald and Otto Latz were never discharged as employees and upon the resumption of operations early in March, 1937, they were each affirmatively requested to return to work. No conditions of any kind were attached to such requests. Isabelle Recktenwald and Otto Latz voluntarily refused to return to work, and Respondent was not thereafter, and is not now, under any duty to reinstate them.

(b) All of the following persons, having been employees

of the Respondent on February 17, 1937, participated in the illegal seizure and retention of buildings 3 and 5 on that day, declined to leave the buildings when ordered so to do by the Respondent and were discharged by the Respondent on the evening of February 17, 1937, for proper cause:

Roy Brown	Frank Moxey
Clarence Dreyer	Robert Pratt
Eric Lindberg	Edward Schuman
George Mondro	George W. Smith

Respondent was not thereafter, and is not now, under any duty to offer reemployment to any of such persons.

(c) After the resumption of operations by the Respondent in March, 1937, Respondent, without any legal duty so to do, voluntarily requested all of the men listed in the next preceding paragraph to fill out applications for reemploy-
3081 ment and return to work. No conditions respecting union membership, union activity, collective bargaining or mutual aid and protection or any other conditions were attached to such request. All of such men voluntarily refused such offers of reemployment. Respondent is under no duty to reemploy any of such men (Rec. 599-617, 763-4, 796-7, 814-5, 889, 1330-1).

Reinstatement of Employees Aiding and Abetting Illegal Retention of Buildings 3 and 5.

Exception No. 31. The Trial Examiner should have found that:

The illegal seizure of Buildings 3 and 5, the issuance by the Circuit Court of the writ of injunction and writ of attachment and the unsuccessful efforts of the Sheriff to enforce such writs, all of which events occurred between February 17th and the morning of February 19th, were widely publicized by the newspapers of Chicago and Waukegan. The happening of these events was generally known in Lake County, Illinois, particularly among the employees of the Respondent. The men who seized Buildings 3 and 5 on February 17th were able to retain their illegal possession of the buildings until February 26, 1937, only by virtue of food, clothing, beds, bedding, stoves and other articles brought into the buildings for them by persons remaining on the outside. Among the persons so aiding and abetting the occupants of Buildings 3 and 5 in their illegal occupancy and their disre-

gard of the orders and writs of the Circuit Court of Lake County, were the following:

W. D. Crump	William B. Magness
T. E. Fagan	Paul Makovec
Charles Fulkerson, Jr.	Bartol Puntarich
Frank Furlan	Harry Rayner
Evelyn Graimer	John Starovich
John Grom	Mike Zelenick
Joseph Lima	

3082 The conduct of the foregoing persons in aiding and abetting the illegal withholding of Buildings 3 and 5 from the Respondent, in violation of the court orders was contrary to law and in itself constituted a violation of the aforementioned injunctional order of the Circuit Court of Lake County. Upon resumption of operations, Respondent did not, by reason of their aforementioned illegal conduct, recall any of the above listed persons for work, and was under no duty so to do (Rec. 983-95, 1106-7, 1062-72, 1182, 1031, 1039, 1087-9, 1097, 1363, 1591, 632).

Exception No. 32. There is no evidence to support Findings 71 to 77, both inclusive.

Exception No. 33. The Trial Examiner should have found that:

(a) Of the thirty men listed in Finding 75, the following actively participated in the illegal seizure of buildings 3 and 5 on February 17, 1937, and the retention of such buildings until February 26, 1937, the disregard of the Injunctional Order of the Circuit Court of Lake County, the resistance with force and violence of the Sheriff of Lake County in his attempts to enforce said Writ of Injunction and Writ of Attachment and the destruction of property in connection with such activities:

Steve Ark	Nate Mogel
Nick Bankowisch	Frank Museck
Joseph Chudy	Anton Nagode
John Cudith	Merritt Pratt
Angelo Galbavy	Joseph Richveis
Fred Hensley	Andrew Rode
Edward Kaucic	Alvar Romppaine
Tony Koncilja	Ed Ruck
John Kondrath	Alan White
Frank Latz	Frank Zelenick
Steve Luczo	

3083 All of the foregoing men were discharged on the evening of February 17, 1937, for proper cause, namely their illegal and violent seizure of buildings 3 and 5 (R. Ex. 1, 2, 7). Upon such discharge said persons were no longer employees of the Respondent, and Respondent was under no duty to reemploy them or to offer so to do. Even if the said men had not been discharged, Respondent would have been, by reason of their participation in such unlawful activities, entirely justified in refusing to recall said persons to work.

(b) The following persons listed in Finding 75 aided and abetted the men in occupancy of buildings 3 and 5 from February 17th to February 26, 1937, in illegally retaining possession of such buildings, in disregarding the orders and writs of the Circuit Court of Lake County and resisting the Sheriff of Lake County in his attempts to enforce said writs:

W. D. Crump	Paul Makovec
Charles E. Fulkerson, Jr.	Bartol Puntarich
Frank Furlan	John Starovich
John Grom	Mike Zelenick
Joseph Lima	

By reason of that unlawful conduct, the respondent was under no duty, upon the restoration of its plant on February 26, 1937, to offer work to any of such persons. (See record citations in Exception 31.)

(c) Upon the resumption of operations by the respondent, all of said persons voluntarily absented themselves from respondent's plant and refused to return to work. Respondent was not and is not now under any duty to reinstate or offer to reinstate any of the foregoing persons as employees of the respondent.

(d) From the time of his eviction from the Respondent's plant on February 26, 1937, to the time of the hearing,
3084 Tony Koncilja was ill, and by reason of such illness, was not able to perform any work (Rec. 1440).

(e) By reason of the foregoing facts and the further fact that respondent made no general call for a return of its employees, upon the resumption of its operations, limiting its call to certain key employees approximating ten per cent of the total (Rec. 1892), respondent is not and was not under any duty to reemploy or reinstate the above listed persons.

(f) The failure of the respondent to reemploy or reinstate the foregoing persons, upon resumption of operations, was in no respect determined by or related to their membership in Lodge 66 or their participation in any legal union or other

concerted activities for the purposes of collective bargaining or other mutual aid and protection.

Alleged Refusal to Reinstate Certain Four Employees.

Exception No. 34. There is no evidence to sustain Findings 78 to 82, both inclusive. The Trial Examiner should have found that:

(a) John W. Jackoway, Arvo Romppaine, Luther Small and Paul Wells were properly discharged for cause on February 17, 1937 (R. Ex. 1, 2, 7). Without being under any duty so to do, the Respondent did, following its resumption of operations, offer to reemploy unconditionally each of said persons, which offers they declined to accept (Rec. 624, 808, 826, 621).

(b) Respondent is under no duty now to reemploy any of said four persons.

3085 Alleged Refusal to Reinstate Certain Five Employees.

Exception No. 35. There is no evidence to sustain Findings 83 to 88, both inclusive. The Trial Examiner should have found that:

(a) Fern Gartley, Evelyn Graimer, Vivienne Johnson, and Marguesite Seifert were not recalled for work by the Respondent solely upon the ground that they were not efficient and cooperative.

(b) All of said four women admitted that they were unwilling to return to work when the plant resumed operations, and stated further that an offer to reinstate them would not have been accepted.

(c) Fern Gartley's production rate was 25% below the average of other girls and 40% below the high rate. Her average approximately 50 to 65% of the average production rate after resumption of operations (Rec. 1990-1991). Her supervisor had warned her that she would have to leave unless she improved, and testified further that "she never made any improvement so, in making adjustments, I never called her back" (Rec. 2009).

(d) Evelyn Graimer did satisfactory work in a team with another girl on piece work basis but her supervisor had no confidence in her work alone on an hourly basis (Rec. 1976).

(e) Vivienne Johnson's inspection average on one-half of her operations during February was 40% below the average. She was a "spasmodic worker • • • and used to choose her own work and boss the other girls too much for her own

good" (Rec. 2008). The replacement of men with women in the cutting department made unnecessary the inspection work previously performed by Vivienne Johnson (Rec. 2026).

3086 (f) Tillie Mesec was asked to return to work without any conditions but refused so to do. Tillie Mesec's testimony indicates that her work was such that she expected, upon returning to work, to be transferred to other duties. That accounts for the statement with respect to her inefficiency in the Answer.

(g) Marguerite Seifert's work was 10% to 15% below the average for February and a considerably greater percentage below the production rates of March, April and May (Rec. 1989). Her superior testified that "she was not an efficient worker" (Rec. 2008). Her work was no longer necessary as a result of the replacement of men by women in the cutting department (Rec. 2026).

(h) The record shows that the Respondent had no knowledge of the union membership of these five women, and no showing of any union activity on their part was made (Rec. 1976-7, 2012).

Alleged Refusal to Reinstate Bessie Luczo.

Exception No. 36. Findings 89 to 92, both inclusive, are not supported by any evidence. The Trial Examiner should have found that:

(a) Bessie Luczo was an inspector in the wire department, who did not join the union until March 3, 1937, after the plant had reopened. She did not engage in any union activities and did not discuss her union membership with anyone in the plant (Rec. 1172).

(b) Bessie Luczo voluntarily absented herself from the plant after the resumption of operations and declined to resume her duties. Respondent's failure to reinstate Bessie Luczo was in no way related to her union membership or to any union or collective bargaining activity.

3087 Alleged Refusal to Reinstate Joan Bissonnette and Frances Fellens.

Exception No. 37. Findings 93 to 97, both inclusive, are not supported by any evidence. The Trial Examiner should have found that:

(a) Joan Bissonette's average work was from 25 to 50%

below the average by others (Rec. 1991). Her supervisor testified that "she was very slow and didn't turn out very much and needed supervision all the time" (Rec. 2009). Miss Bissonette admitted that she had been criticized by her supervisor for her attitude but that union membership or activity had never been mentioned. Her supervisor added that the criticism of attitude was due to her failure to apply herself to her work and her tendency "to do an unusual lot of loafing" (Rec. 2016). She engaged in no union activities (Rec. 1615).

(b) Frances Fellens did well on piece work but "did not put forth her best efforts on hourly work." Piece work had been abolished on the reopening of the plant. Her supervisor also found that Miss Fellens was "always agitating trouble. She seemed to make remarks about this one and that one and I think that when that tension is in the department no one can do the work that is required of them." Her supervisor did not know Miss Fellens was a member of the union and no evidence of union activity was offered (Rec. 1975).

(c) The charge in the Complaint that Miss Bissonette and Miss Fellens were discharged and refused employment by reason of union membership and activity was not sustained by any evidence.

3088 Reorganization of Contact Department.

Exception No. 38. There is no evidence to sustain Findings 98 to 104, both inclusive. The Trial Examiner should have found that:

(a) The principal competitors of the Respondent in the contact point business have, for a considerable period of time, employed women in cutting, spinning and grinding work. In consequence thereof, they enjoyed lower costs and a competitive advantage over the Respondent. In order to meet such competition, the Respondent reorganized the contact department upon the reopening of its plant and employed women to do grinding, spinning and cutting work in lieu of sixteen men who had previously performed such work (Rec. 1844, R. Ex. 20). As a result of such change, the Respondent effected a very substantial saving in several respects—first, the wage scale for women was 45¢ an hour compared with 75¢ an hour for men; second, women, enjoying the advantage of a more sensitive touch, turned out a better product, reduced waste and reduced inspection costs; and, third, the women used less

cutting discs, saving thereby in the expense of material. Respondent enjoyed a reduction in cost approximately 50% as a result of such reorganization (R. Ex. 21, 22).

(b) The reorganization in the contact department and the change from men to women for the cutting, grinding and spinning jobs was made for the bona fide purpose of effecting an operating saving for the Respondent and for no other purpose whatsoever. By reason of such change Respondent was unable to continue the employment of any men in such jobs.

(c) The men who had formerly occupied the jobs in the contact department for which women had been employed
3089 pursuant to the reorganization were (1) Ed Brunke, Al Bunton, Phil Graimer, Stanley Grum, Victor Hertel, John Praski, Frank Scheuer, Elmer Luke, Leo P. Daluga, and Harold Dreyer, all of whom had participated in the illegal seizure of buildings 3 and 5 and had been discharged for that reason, and (2) Charles E. Fulkerson, Sr., T. E. Fagan and William D. Magness, who had actively aided and abetted in the illegal retention and possession of such buildings during the period from February 17th to February 26, 1937, in violation of the Writ of Injunction of the Circuit Court of Lake County and of the statutes of the State of Illinois. Respondent was under no obligation to offer reemployment to any of these men either in the contact or any other department of its business. Failure to offer such reemployment to these men was in no way related to their membership in Lodge 66 or their participation in any legal concerted activities for the purpose of collective bargaining or other mutual aid and protection.

Abolition of Maintenance Department.

Exception No. 39. There is no evidence to support Findings 105, 107, 108 and 109. The Trial Examiner should have found that:

(a) Upon reopening its plant, the Respondent abolished its maintenance department for the bona fide purpose of effecting a saving in operations and employed only one carpenter, one electrician and two helpers for minor services (Rec. 1842, 1854).

(b) The men who had formerly occupied these jobs which had been abolished were Andrew Anderson, Ted Christianson, Eugene D. Hendee, Art Holm, Jr., Oscar Johnson, Carl

A. Swanson, Lester Crump, Vincent Ditmeyer, Charles
3090 Warner, Jerome Camernicke, Jr., and Fred Yaeger. All of these men had been discharged on February 17, 1937, for participating in the illegal seizure of buildings 3 and 5 and refusing to surrender them to the Respondent upon its demand (R. Ex. 23). Following their discharge all of these men continued in their illegal occupation of buildings 3 and 5 until February 26th, disregarding the Writ of Injunction of the Circuit Court of Lake County and resisting with violence the attempts of the Sheriff of Lake County to enforce the Writ of Injunction and the Writ of Attachment.

(c) None of the aforementioned men applied for re-employment, and they would not have accepted employment if offered, unless all men employed by the Respondent on February 17, 1937, were reemployed regardless of the reason for their discharge.

(d) The Respondent was not, and is not now, under any duty to offer employment to said men in their former or in new or different capacities in the Respondent's plant, and its failure so to do in no way contravenes the National Labor Relations Act.

Tool Room Employees.

Exception No. 40. There is no evidence to support the second sentence of Finding 110 or Findings 111 to 114, both inclusive. The Trial Examiner should have found that:

(a) Upon the reopening of the plant, the Respondent abolished all jobs in the tool room relating to the manufacture of standard dies for its plant requirements (Rec. 1842-3). By procuring such dies to be made by mass production machine methods in plants especially equipped for that purpose, the Respondent succeeded in effecting a saving. Such reorganization in the tool room was designed and carried out for the bona fide purpose of effecting an operating sav-
3091 ing. As a result, six jobs, formerly held by R. E. Du-Bois, Frank Moxey, Ted Olson, Paul Wells, Joe Petraities and Harry Rayner were abolished (Rec. 1855, 1893, R. Ex. 24).

(b) All of the aforementioned men whose jobs had been abolished in the tool room, other than Harry H. Rayner, had been properly discharged on February 17, 1937, for their illegal seizure and retention of buildings 3 and 5. Harry Rayner admitted aiding and abetting those within the build-

ings to retain possession thereof from February 17th to February 26th. None of these men applied for reemployment but testified that they were unwilling to return unless all men who had been employed on February 17, 1937, were reemployed regardless of the cause for their discharge.

(c) The Respondent was not, and is not now, under any duty to offer employment to said men in their former or in new or different capacities in the Respondent's plant, and its failure so to do in no way contravenes the National Labor Relations Act.

(d) Joseph Hoff, seventy-six years old, handed out tools to workmen from the crib, and Joseph Aigner, seventy-four years old, served as janitor on the tool room floor. Upon the reopening of the plant both of these men were replaced by one man, twenty-three years old. The tool room foreman testified that Hoff and Aigner were replaced at his request and that their younger successor did the work of both and, in addition, had time available for small production jobs (Rec. 2038). He further testified that when the matter was discussed with the plant superintendent, union membership was not even mentioned, and admittedly neither of these elderly men engaged in any union leadership or activity. They were not reinstated solely by reason of their inefficiency and Respondent is under no duty to reinstate them.

3092 Rare Metal Workers of America, Local No. 1.

Exception No. 41. There is no evidence to support Findings 119 to 125, both inclusive. The Trial Examiner should have found that:

(a) Since the resumption of operations in March, there have been discussions among the Respondent's employees of the desirability of organizing their own union to continue independently or as an affiliate of the American Federation of Labor (Rec. 1562). Rare Metal Workers of America, Local No. 1, was organized by a committee consisting solely of hourly employees. After the hourly shop employees held a meeting, they announced their overwhelming approval of such organization. They were guided by independent counsel selected and paid by them. No member of the management in any way participated in, or interfered with, the organization of the union (Rec. 1562-4, 1568).

(b) No member of the management aided, encouraged or in any respect participated in the organization of the union

prior showing of improper or illegal discharge (Rec. 714-26) and the motion of the Respondent to strike such testimony with respect to reinstatement (Rec. 1636-44).

Exception No. 50. The Trial Examiner erred in overruling the Respondent's motion to strike the testimony of Art Holm, Sr. (Rec. 639) and the motion of the Respondent to dismiss the Complaint with respect to said Holm (Rec. 1647).

Exception No. 51. The Trial Examiner erred in overruling the motion of the Respondent to exclude testimony with respect to offers of Lodge 66 to negotiate in March, 1937 (Rec. 645-7) and the objections of Respondent to Exhibits 25 (Rec. 643-4), 26 (Rec. 649), 27 and 28 (Rec. 651) and 25-A and 26-A (Rec. 1632).

Exception No. 52. The Trial Examiner erred in overruling the following objections of the Respondent:

(a) Objections to the entire line of questioning of Witness Aitchison on the National Metal Trades Association membership, constitution and declaration of principles (Rec. 424, 433), and motion to strike testimony of Witness Abbott (Rec. 497-8).

(b) Objections to questions regarding construction of fence on Respondent's property (Rec. 451-2) and motion to strike testimony with respect thereto (Rec. 453).

(c) Objections to evidence respecting employees who had been offered reemployment without condition (Rec. 806) and motion to exclude evidence in connection therewith Rec. 1636-47).

(d) Objections to testimony respecting earnings of men who had been discharged by the Respondent for good cause (Rec. 208).

3096 (e) Objection to the hearsay testimony of Meyer Adelman respecting conversations between Respondent and others (Rec. 2383-7, 2400).

(f) Objections to testimony by Witness Adelman as to rules of Amalgamated Association of Iron, Steel and Tin Workers of North America respecting the admission of lodges without the production of the constitution, articles of association, by-laws, regulations or other writings containing such rules (Rec. 220).

Exception No. 53. The Trial Examiner erred in overruling the Respondent's objections to the following exhibits of the Board and admitting such exhibits into evidence:

Nos. 9 and 10	Rec. 180-2
1-J, 1-K, 1-L, 1-M and 1-N	Rec. 361
18, 19 and 20	Rec. 365-7, 369
21	Rec. 440
22	Rec. 442
23	Rec. 444
24	Rec. 449, 450

Exception No. 54. The Trial Examiner erred in admitting into evidence hearsay, without verification, respecting matters within the knowledge of witnesses who either testified on other matters during the hearing or were otherwise available to the Board. Such error was prejudicial in that evidence was received without verification or substantiation and the Respondent was deprived of an opportunity of proper cross-examination.

Exception No. 55. The Trial Examiner erred in admitting oral testimony as to the contents of books, records and other writings in the possession, or under the control, of the witnesses testifying for the Board. (For example, Rec. 3097 2185-7, 228-9). Such error was prejudicial in that evidence was received without any verification or substantiation and the Respondent was deprived of an opportunity of verification and proper cross-examination.

Prejudicial Conduct of the Trial Examiner.

Exception No. 56. By his statements, conduct and rulings throughout the hearing, the Trial Examiner exhibited prejudice against the Respondent and unmistakable partisanship in favor of Lodge 66. Notwithstanding that the same parties, the same counsel and the same witnesses were engaged in trial before the Circuit Court, the Trial Examiner denied the Respondent's motion to adjourn the hearing until the completion of the court trial (Rec. 15). Only the intervention of an injunction by the Circuit Court saved the Respondent from the necessity of proceeding in two separate hearings on the same subject matter at the same time (Rec. 37). Respondent's request for subpoenas and subpoenas duces tecum were delayed for days by the Trial Examiner, and, when finally submitted to the Board, were accompanied by the Examiner's limitations and unfavorable expressions (Bd. Ex. I-S I-T). Witnesses testifying from memory as to the contents of records were encouraged by the Examiner to refuse to produce such records (Rec. 240-1, 338-41, 2168-74,

2185, 2187, 2218). Counsel for the Respondent were interrupted in their cross-examination of hostile witnesses by the Trial Examiner, who himself interposed questions or permitted counsel for the Board so to do for the purpose of influencing the testimony of the witnesses and interfering with the Respondent's conduct of its defense (Rec. 250-5). At the conclusion of the examination of numerous witnesses, the Trial Examiner in effect testified, himself, by the use of prompting and leading questions which placed in the mouths of witnesses words that had not been before uttered under a thorough and searching examination and cross-ex-
3098 amination by counsel for both sides (Rec. 263, 2396, 175). Throughout the hearing, the Trial Examiner sought to limit and minimize the testimony respecting the violence and other illegal acts attendant upon the sit-down strike (Rec. 351, 406-7). While limiting the cross-examination by the Respondent to the subject matter of the direct examination, the Trial Examiner extended to the Board wide and unlimited scope upon cross-examination (Rec. 667, 2041, 2051). The conclusion is inescapable that the Trial Examiner entered upon the hearings with a definite design and purpose of submitting a report unfavorable to the Respondent without regard to the evidence. There is no warrant on this record for the statement on Page 4 of the Intermediate Report that "full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to the parties."

V.

Conclusion.

Respondent respectfully submits that the findings, conclusions and recommendations of the Trial Examiner are not sustained by the evidence as hereinbefore pointed out in these exceptions, and respectfully asks that the same be vacated, set aside or modified in accordance with these exceptions. Respondent requests an opportunity to submit briefs to the Board.

Fansteel Metallurgical Corporation,
By R. J. Aitchison,
President.

Levinson, Becker, Peebles & Swiren,
Sidney H. Block,
Counsel for Fansteel Metallurgical Corporation, Respondent.

3099 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

MOTION TO EXTEND TIME OF FILING STATEMENT OF EXCEPTIONS.

Lester F. Collins,
Attorney for Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America.

3100 MOTION TO EXTEND TIME FOR FILING EXCEPTIONS TO THE INTERMEDIATE REPORT.

Now comes Lodge 66 of The Amalgamated Association of Iron, Steel and Tin Workers of North America, by Lester F. Collins, its Attorney, pursuant to Section Thirty-four (34) National Labor Relations Board Rules and Regulations, Series One (1) as amended, dated April 27, 1936, and moves to extend the time for Filing a Statement of exceptions to the Intermediate Report herein to date of September 22nd, 1937, and for a proper cause, says:

1. That said statement of exceptions was mailed September 17th, 1937, by Registered letter, and delivered September 20th, 1937, to the National Labor Relations Board, Washington, D. C.

2. That the undersigned, on date of September 13th, 1937, was informed by Leonard C. Bajork, Acting Regional Director for the Thirteenth Region that the Respondent, the Fansteel Metallurgical corporation, had been granted an extension of time, to file their Statement of Exceptions to the Intermediate Report herein, from September 7th, 1937, to September 17th, 1937.

3. That the undersigned received instructions to file a Statement of Exceptions to the Intermediate Report on September 17th, 1937, from Lodge 66 Petitioner herein and that said Statement of Exceptions were mailed by Registered Letter on said date of September 17, 1937 as per Affidavit attached hereto and made a part hereof as Exhibit "A".

Now, Therefore, the Undersigned, as Attorney for Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, respectfully moves the National Labor Relations Board for an Order granting an extension of time within which to file a Statement of Exceptions to the Intermediate Report, from September 7th, 1937, to September 20th, 1937, the last date being the date of the receipt of a Statement of Exceptions by Lodge 66, Petitioner herein, 3101 and that said Board consider said Exceptions heretofore filed herein.

Lester F. Collins,
Attorney for Lodge 66 of the A. A. of I. S. & T. W. of N. A.

State of Illinois, }
County of Lake. } ss.

Lester F. Collins, Attorney for the Petitioner herein, being first duly sworn, on oath deposes and says that he has read the above and foregoing Motion by him subscribed; that he knows the contents thereof and that the same are true.

Lester F. Collins,
Affiant.

Subscribed and Sworn to this 4 day of October, 1937, A. D.

Joseph Kaufer,
Notary Public.

(Seal)

EXHIBIT "A".

Registered Return Receipt

3102 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XIII-C-80) • •

STATEMENTS OF OBJECTIONS AND EXCEPTIONS OF LODGE 66 OF THE AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA.

Lester F. Collins,
Counsel for Lodge 66 A. A. of I. S. and T. W. of N. A.

3103 Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Complainant in the above entitled cause does hereby make objection and takes exception to the Intermediate Report by Tilford E. Dudley, Trial Examiner, dated September 2nd, 1937, as follows:

First: The Maintenance Department.

While the Trial Examiner's Intermediate Report, sections 105, 107, 108, and 109, finds that eleven men, in the maintenance department, namely:

Carpenters
Andrew Anderson
Ted Christianson
Eugene D. Hendee
Art Holm, Jr.
Oscar Johnson
Carl A. Swanson

Electricians
Lester Crump
Vincent Deitmeyer
Charles Warner

Electrician's Helper
Jerome Camernick, Jr.

Steamfitter
Fred Yeager

were not reemployed because the Fansteel Metallurgical Corporation had let all of said work out on contract to carpenters, electricians and others, because they contended that they saved money; nevertheless, Complainant, Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, contends that said finding is contrary to the evidence and erroneous for the following reasons:

a. A. J. Anselm, plant superintendent, testified that since the reopening of the plant in March, 1937, they had employed an electrician at wage of $1.00 per hour.

b. That since the conclusion of the hearing on June 25, 1937, the Respondents, the Fansteel Metallurgical Corporation, has employed a foreman in the maintenance department;

that said foreman is on the regular payroll; that they (the Respondent) have hired four regular full time employees in said maintenance department who do carpenter work, mill wright work, cabinet work, plumbing, steamfitting and electrical repair work.

Second: Tool Room Employees.

The Trial Examiner's Intermediate Report, heretofore filed herein, in sections 110, 111 and 112, finds that five men in the Tool Room namely, viz: Raymond DuBois, Theodore Ohlson, Joseph Aigner, Joseph Petraitis, and Harry H. Rayner, were discharged because their jobs were abolished and a great part of their work was being let out on contract (P. 1855), to
3104 cut down on expenses.

The Amalgamated Association of Iron, Steel and Tin Workers of North America contends that said finding is erroneous in the light of additional and newly discovered facts arising since the conclusion of said hearing, had before the Trial Examiner, in this:

a. That the National Metal Trades Association, since the conclusion of said hearing, has caused advertisements to be placed in Chicago Newspapers seeking tool room employees for the Fansteel Metallurgical Corporation of North Chicago, Illinois.

b. That since said hearing the Respondent, the Fansteel Metallurgical Corporation, has employed machinists through the National Metal Trades Association of Chicago, Illinois, who are now permanently employed in the Tool Room of the Respondent's Company.

Wherefore, Complainant, the Amalgamated Association of Iron, Steel and Tin Workers of North America, respectfully submits that the Trial Examiner's Intermediate Report dated September 2, 1937, is objectionable in regard to paragraphs 105, 107, 108, and 109 in the section on The Maintenance Department and in regard to paragraphs 110, 111, 112, 113 and 114 inclusive in the section of Tool Room Employees, and respectfully ask that said two sections be modified in conformity herewith; that said National Labor Relations Board order the immediate reinstatements of the men heretofore named in said sections, to their former positions or equivalent employment on a full time basis, with all rights and privileges previously enjoyed, and that said Board further make said employees whole for any loss of pay they have suffered by reason of the refusal to reemploy them by payment to them re-

spectively, of sums equal to those which they normally would have earned as wages at their respective positions during the period from the date of the reopening of the plant, namely: March 12, 1937, to the date of such offer of employment less amounts earned by them respectively during such period; and that said Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America be permitted to submit additional proof, if deemed necessary by said National Labor Relations Board, all in accordance with said objections and exceptions, and according to the rules, regulations
3105 and Orders of said Board in relation hereto.

Respectfully submitted,
Lodge 66 of the Amalgamated Association of Iron, Steel and Tin Workers of North America,
By: Sgn. Lester F. Collins,
Attorney for said Lodge 66.

Lester F. Collins,
218 Washington St.,
Waukegan, Illinois.
Telephone: Majestic-5482.

3106 UNITED STATES OF AMERICA,

Before the National Labor Relations Board.

In the Matter of Fansteel Metallurgical Company, and Local 66 of Amalgamated Association of Iron, Steel and Tin Workers of North America.	Case No. C-235.

ORDER.

An Intermediate Report having been issued in the above case and duly served upon the parties and the respondent having filed its exceptions to the Intermediate Report on September 17, 1937, and the Amalgamated Association of Iron, Steel & Tin Workers of North America having mailed its exceptions to the Intermediate Report on September 17, 1937, said exceptions having been received by the Board on Sep-

tember 20, 1937 and said Amalgamated Association having thereafter moved for an extension of its time to file its exceptions and having requested the Board to accept the exceptions heretofore filed, and the Board having duly considered the matter,

It Is Hereby Ordered that the time of the Amalgamated Association to file exceptions to said Intermediate Report be and hereby is extended and that the exceptions heretofore filed be and hereby are accepted.

Dated, Washington, D. C., October 9, 1937.

By direction of the Board:

Benedict Wolf,
Benedict Wolf,
Secretary.

(Seal)

3108 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XIII-C-80) * *

Decided March 14, 1938.

Rare Metal Products Manufacturing Company—Interference, Restraint, or Coercion: anti-union statements; use of labor spy; isolation of Union president; attempt to induce employees to renounce Union and institute employee representation plan—*Collective Bargaining:* flat refusal to deal with "outside" union as representative of employees—*Strike:* brought on by employer's unfair labor practices—*Discrimination:* alleged refusal to reinstate strikers; charges of, dismissed, due to failure of strikers' committee to make request for reinstatement—*Company-Dominated Union:* result of employer's prior efforts to institute "inside" union in plant; sponsorship, denomination, and interference with formation and administration of; support of; mimeographing and typing services furnished by employer; use of company building for meetings and balloting; contrast between hostility to Union and open favoritism toward company-dominated organization; disestablished as agency for collective bargaining—*Reinstatement ordered:* strikers, upon application employer's contention that participation in sit-down strike should preclude reinstatement, found without merit under circumstances—*Discharge Ordered:* Employees hired during and after strike if necessary to make room for employees re-

instated—*Back Pay:* awarded to strikers whose applications for reinstatement are refused by employer.

Mr. William R. Walsh, for the Board.

Levinson, Becker, Peebles & Swiren, by *Mr. Max Swiren* and *Mr. Harold M. Keele,* of Chicago, Ill., and *Mr. Sidney H. Block,* of Waukegan, Ill., for the respondent.

Mr. Lester Collins, of Waukegan, Ill., for the Union.

Mr. Lewis M. Gill, of counsel to the Board.

DECISION
AND
ORDER

Statement of the Case

Upon charges and amended charges duly filed by Meyer Adelman, organizer for Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local 66, 3109 herein called the Union, the National Labor Relations Board, herein called the Board, by Leonard C. Bajork, Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated May 25, 1937, against Fansteel Metallurgical Corporation, North Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint and accompanying notice of hearing were duly served upon the respondent and the Union. On June 2, 1937, the respondent filed an answer to the complaint denying the unfair labor practices charged, alleging that all of its manufacturing operations are intrastate in character, and praying that the complaint be dismissed.

Pursuant to the notice, a hearing was held at Waukegan, Illinois, from June 7 to June 25, 1937, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. The Board, the respondent and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

During the hearing, the respondent moved for dismissal of the complaint in so far as it was inconsistent with an order and decree of the Circuit Court of Lake County, Illinois, relating to a sit-down strike in the respondent's plant in which certain individuals named in the complaint participated. The Trial Examiner denied the motion on the ground that the issues and parties were not the same and the court's findings not binding upon the Board. This ruling is hereby affirmed. At the conclusion of the Board's case, the respondent moved to dismiss the complaint as a whole and also made numerous motions to dismiss particular parts thereof and to strike certain testimony. Some of these motions, including the motion to dismiss the entire complaint, were denied at the hearing; the Trial Examiner reserved rulings on others until the issuance of his Intermediate Report. A large number of other motions and of objections to the admission of evidence were made during the course of the hearing, both by counsel for the respondent and by counsel for the Board. The Trial Examiner reserved rulings on some of such motions and objections for disposition in his Intermediate Report.

On September 2, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) of the Act, and recommended that the respondent cease and desist its unfair labor practices, reinstate with back pay, all but ten of the individuals named in the complaint as having been
3110 discriminated against, bargain collectively with the Union, withdraw recognition from a company-dominated labor organization, and take certain other appropriate action to remedy the situation brought about by the unfair labor practices. Thereafter, the respondent filed voluminous exceptions to findings and recommendations of the Intermediate Report. The Union also filed exceptions to certain parts of the Intermediate Report. The Board has fully considered the exceptions to the Intermediate Report, and, in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them. The Board has also reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a New York corporation with offices at New York City and at North Chicago, Illinois, where its only plant is located. It is engaged in the manufacture and sale of various products from tantalum, columbium, tungsten, molybdenum, and other rare metals. Its finished products include contact points for ignition systems, tantalum parts for chemical and rayon industries, battery chargers and rectifiers, and special alloy wires for vacuum tubes and radio tubes. Approximately 70 per cent of the raw materials used in the manufacturing processes of the respondent originate in states other than the State of Illinois and in foreign countries. Approximately 70 per cent of its finished products are sold and shipped into states other than the State of Illinois and into foreign countries. The value of its manufactured products during the calendar year of 1936 was about $1,050,000. The respondent has few competitors in its field, and is in fact the only manufacturer of some of the products it makes.

II. THE UNION

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, is a labor organization affiliated with the Committee for Industrial Organization, and admits to its membership hourly paid employees of the respondent. It excludes from membership clerical employees, laboratory men, engineers, and supervisory employees.

3111 ### III. THE UNFAIR LABOR PRACTICES.

A. *Background of the unfair labor practices.*

Until early in July 1936 there was no labor organization in the respondent's plant. Dissatisfaction arose at that time over the introduction into the plant of certain "efficiency experts" who proposed a system of wages based upon certain minima of production. Envisioning a serious danger to their scale of earnings, the employees began seriously discussing organization. A group of employees undertook to establish an industrial union in the plant, and an organization drive

or the solicitation of membership or the conduct and management of its affairs (Rec. 2081, 2082, 2072). No pressure or coercion of any kind was exerted, directly or indirectly, upon any employees to induce them to join, or refrain from joining, the union (Rec. 1400, 1453, 1503, 1510). In no respect did the Respondent dominate, control, interfere with or give financial or any other aid to Rare Metal Workers of America, Local No. 1.

Exception No. 42. Findings 127 and 128 are not supported by the evidence.

3093 With Reference to the Conclusions and Recommendations.

Exception No. 43. All of the conclusions and recommendations are contrary to the record evidence, are based upon improper evidence and matters and are contrary to law.

Exception No. 44. The National Labor Relations Act does not authorize or permit resort by employees to force and violence to accomplish the purposes of the Act. Even if the record evidence could be interpreted to sustain the Trial Examiner's findings that the Respondent failed to bargain collectively with its employees on February 17, 1937, as required by the National Labor Relations Act, their sole remedy was to seek redress therefor in a peaceful and orderly proceeding as provided in the Act—and not by the performance of illegal and criminal acts, namely, the seizure and retention of Respondent's plant. The Trial Examiner's recommendations that the Respondent be required to reemploy men discharged for illegal seizure and retention of its plant and reinstatement who aided and abetted in the illegal retention and possession of its plant are based upon the assumption that the mere failure of the Respondent to bargain collectively justifies, as a matter of law, the illegal seizure and retention of Respondent's plant and bars the employer from exercising the right of discharge of such men for such conduct. In effect, the conclusions and recommendations of the Trial Examiner approve and condone resort to violence and other illegal and criminal acts for enforcement of demands, instead of the orderly remedy provided by the Act.

Exception No. 45. The burden of proving that any employees were discharged or not recalled to work by reason of union membership or union or other activities author-

ized or guaranteed by the National Labor Relations Act rests entirely upon the Board, but by the conclusions and recommendations of the Trial Examiner, such burden of proof has, in effect, been thrust upon the Respondent.

3094 Exception No. 46. In the absence of a clear showing of discrimination by reason of union membership or activity, the determination of inefficiency of an employee by the management, and its decision not to reemploy or recall such employee for work, is not subject to review by the Trial Examiner or the Board under the National Labor Relations Act.

Exception No. 47. The recommendations of the Trial Examiner that the Respondent be ordered to withdraw all recognition from the Rare Metal Workers of America, Local No. 1, as representative of its employees, and further ordering the Respondent to disestablish the said Rare Metal Workers of America, Local No. 1, were made without authority of law and were not supported by the evidence. The Board is without power or authority to enter any order directing with what agency the Respondent must engage in collective bargaining because there is no basis in the complaint for such an order and, further, there is no warrant in the Act for such action, the said Rare Metal Workers of America, Local No. 1, not having been made a party to said proceeding and not having been given the opportunity of a hearing. Without such hearing, and a proper proceeding under section 9 of the Act, all said recommendations with reference to the disestablishment of said union are contrary to law and the provisions of the National Labor Relations Act.

IV.

Exceptions to Rulings on Motions, Objections and Other Matters.

Exception No. 48. The Trial Examiner erred in overruling the motion to dismiss the Complaint presented by the Respondent at the close of the Board's case and renewed at the close of the entire proceeding. Such motion to dismiss, appearing on pages 1650 to 1659 of the record, is incorporated herein by this reference thereto.

3095 Exception No. 49. The Trial Examiner erred in overruling the motion of the Respondent to exclude testimony with respect to reinstatement of employees without a

was conducted under the guidance of Meyer Adelman, an organizer for the Steel Workers Organizing Committee of the Amalgamated Association of Iron, Steel and Tin Workers of North America. A charter, designating the Union as Lodge 66 of the Amalgamated and dated July 24, 1936, was presented to the Union on August 14, 1936. A skeleton organization had been set up prior to the receipt of the charter; temporary officers had been elected, and a substantial beginning toward organizing the employees of the respondent had been made.

B. *Interference, restraint, and coercion.*

On the morning of September 10, 1936, John Kondrath, an employee of the respondent and president of the Union, requested A. J. Anselm, the respondent's plant superintendent, to meet with a committee of the Union. Anselm specified that only employees of five years' standing should be on the committee. This condition, it happened, was satisfied at the time. While much grosser examples of anti-union conduct followed, we may point out here that the imposition of such a condition on the personnel of the Union committee was totally unwarranted. The right of employees, guaranteed by the Act, to representatives of their own choosing necessarily negatives any privilege on the part of the employer to place limitations upon the representatives whom the employees are permitted to designate.

At any rate, a committee of six employees, including Kondrath, met with Anselm that afternoon. A contract[1] was presented for his consideration. It embodied certain provisions for improvements in working conditions, for a closed-shop and check-off, for recognition of and bargaining with the Union. Anselm read it over, and objected to the closed-shop and check-off provisions. However, he by no means limited his remarks to such legitimate subjects of objection and negotiation. He announced that it was the policy of the respondent to refuse recognition to any union with "outside influences." Producing several copies of a booklet[2] setting
3112 forth details of an employee representation plan, he handed them out to the committee and asked them to consider such a plan in lieu of the form of organization they had chosen. He did not raise the question of whether the

[1] Board Exhibit No. 12.

[2] Board Exhibit No. 12.

Union represented a majority of the employees in an appropriate unit; he made it clear that the respondent's policy was to refuse recognition to "outside" unions.

Several employees who were present at this conference testified to the above facts, and no controverting testimony was presented by the respondent, although Anselm was present at the hearing and in fact testified at some length on other phases of the case. In its exceptions to the Intermediate Report of the Trial Examiner, however, the respondent urges a finding that by "union recognition" Anselm was referring merely to the closed shop. This peculiar construction of his remarks was not suggested at the hearing, and we would be disregarding the evidence if we adopted it. As a matter of fact, another proposed contract,[3] with the closed-shop provision eliminated, was presented by the committee subsequently, to no avail. However, the evidence clearly shows that regardless of terms, Anselm announced an unqualified opposition to outside unions.

If any doubt remained in the minds of the employees as to Anselm's views on the point, it was removed on the occasion of the committee's next visit to his office on September 21, 1936. This time the Union had duly voted to include Adelman, the "outside" organizer, on the committee. Pursuant to an appointment which they understood to have been made for them by a representative of the Board, the committee proceeded to Anselm's office and were shown inside. Anselm was out for the moment but soon returned. Adelman was introduced to him by Ed Ruck, one of the employees on the committee. The conference was short-lived. The testimony of several of the committee members who were present is practically identical as to Anselm's remarks when Adelman was introduced. The testimony of John Kondrath in that regard is as follows:

> Mr. Anselm said, "I have nothing to do with this gentleman here. He is not on my pay roll." And he says, "Therefore, I don't want to have any discussion with him. He better go out and present his card and wait out in the lobby, and then maybe I will leave him in."
>
> Well, Meyer Adelman told Mr. Anselm he had no calling cards, but that he thought that the committee that had brought him in there was better than any calling cards he could have.
>
> Mr. Anselm got kind of upset and told him to leave,

[3] Board Exhibit No. 17.

and get out. He says, "Get out of here. We don't want you", or words to to that effect.

3113 So then Mr. Meyer Adelman went out, and Mr. Anselm was very excited and angry, and wanted to know who brought him in.

After Adelman's departure, Anselm denied that any appointment had been made, and the committee withdrew.

The anti-union conduct of the respondent by no means was limited to the occurrences described above. The expressions of hostility to the Union were supplemented by a prompt and aggressive attempt on the part of the respondent to foist upon its employees a company-dominated union.

We have already noted that at the September 10 conference Anselm sought to interest the committee in an employee representation plan. The afternoon of the same day Anselm had conversations with Thomas Fagan, Ted Daluga, and Clarence Dreyer, three employees in the cutting department, relative to the contract proposed by the Union. Fagan and Dreyer testified that Anselm tried to induce them to drop the Union and to sign a petition for a company union. Anselm denied this and testified that he merely was trying to ascertain whether they understood the full import of the provisions of the contract. As to the petition referred to by Fagan and Dreyer, he testified that it was not circulated that day, but admitted that he caused such a petition, relating to an employee representation plan, to be circulated three or four days later. According to his own testimony, this petition "called for an expression from the employees, if they favored that plan." He testified further that his object in circulating the petition was to "find out what the boys down in the shop were thinking about."

The circulation of the petition was vigorously conducted, during working hours. Anselm himself and a number of foremen participated. Uncontradicted evidence shows that Hall, a "straw boss," told Zelenick, an employee, that "we are trying to form a company union . . . you might as well sign up . . . The company will never recognize the outside union anyway," and that Schardt, a foreman, remarked to Steve Luczo, another employee whose signature Hall was soliciting, "Steve, you are better off if you sign for the company union." Other employees were also solicited while they were at work.

Shortly after the second conference on September 21 each employee received an inter-office envelope containing two documents. One was entitled "A Plan of Employee Represen-

tation Which Has Been Pronounced Successful in a Large Number of Plant," and contained details of a typical company union set-up, with provision for committees containing an equal number of employee and management repre-
3114 sentatives and for arbitration of grievances if adjustment proved impossible.[4] No dues were involved. The other document was a statement of the respondent's labor policies, containing various assurances of the respondent's willingness to treat its employees well.[5] Included in it were the following illuminating passages:

> To-day, there is no question of its (respondent's) ability to provide employment and opportunity unless its progress is broken by internal troubles.
>
> The management will not sign the closed shop agreement nor any agreement which has for its objective the virtual control of the relations of the company and its various employees.
>
> In the best interests of everyone concerned, management reserves its right to reward individual merit and efficient work, and to protect and preserve the rights of its individual workers. Likewise, management reserves the right to discontinue the services of any whose work, abilities or general conduct is not in keeping with the best interests of the business and its employees as a whole.

In view of Anselm's preceding clarification of the respondent's attitude toward "outside" unions, and together with the drive to set up a company union, the meaning of the documents was obvious. The carefully guarded statements in the announcement of the respondent's policy were clear enough so that employees could readily comprehend the policy of the respondent toward the Union. The accompanying company union plan served to drive the message home to any who failed to "catch on" from a reading of the statement of policy.

This attempt to set up a company union proved abortive. Despite the presence of a large number of signatures on the petition, enthusiasm for a company union appeared to be centered principally in the respondent, and the campaign was dropped. Anselm testified that Aitchison, the president, told him to allow the matter to rest with the employees. This was after the signatures had been obtained.

The attack shifted to other fronts. On November 11, 1936, Kondrath, the president of the Union, was called into An-

[4] Board Exhibit No. 15.

[5] Board Exhibit No. 14.

selm's office, which is set apart from the rest of the plant. Kondrath had been working in the tool room. Anselm told him that he had a new job for him. A room near Anselm's office had been fitted up with a lathe and a drill press, and Kondrath was to work there. Kondrath testified that Anselm told him "you are to work over here from eight o'clock until four o'clock, and during the noon hour you can go and eat your dinner any place you want to, except visiting inside of the plant." Upon obtaining Kondrath's promise to
3115 stay away from the other workers, Anselm took him to his new quarters and told him that if there was no work to be done at a given time, he was to sit down. Magazines were brought to him to enable him to while away the time. One Schultz, Anselm's secretary, served as a flunkey to go to the shops and get Kondrath tools when needed. Kondrath was paid for the lunch period. It is not clear from the evidence what Kondrath's duties were in his isolated location; the respondent's answer alleges that the purpose of the transfer was to have Kondrath "assist in the development and improvement of machines and machine parts." On the evidence, however, it is abundantly clear that the real purpose was to keep him away from the other workers. This ingenious isolation of the employees from the presence of the Union president was abandoned in January, when Kondrath was returned to his old post in the tool room.

One further matter deserves scrutiny before we discuss the events of February 17, 1937. On August 17, 1936, the respondent applied for membership in the National Metal Trades Association, herein called the N. M. T. A. Its application was accepted in the latter part of March 1937. The N. M. T. A. is an association of employers dedicated to the principle of the open shop, and in its Declaration of Principles, which was introduced into evidence, it proclaims that its members will not "deal with striking employees as a body." Aitchison testified that he was ignorant of N. M. T. A. principles relating to labor organizations, except that he agreed with its views on the closed-shop. He testified that the respondent joined the N. M. T. A. for the sole purpose of furthering business efficiency by means of its facilities for exchange of views between its members on common problems of manufacturing technique.

One phase of the N. M. T. A.'s activities was not unknown to the respondent, and that was its function of supplying espionage agents. The respondent employed one Alfred John-

stone through the N. M. T. A. the day after applying for membership therein. The complaint alleges that he was hired as a labor spy and used as such; the respondent's answer denies this and alleges that he was hired "for the purpose of working in the respondent's plant and observing and reporting upon all matters coming to his attention respecting plant production, efficiency of plant supervision, efficiency of tool and machine equipment, the morale of employees, shop working conditions, and all other factors reflected in the prevailing rate of production." The testimony relating to this phase of the case warrants particularly close attention, for it is common knowledge that the use of the labor spy is a device peculiarly calculated to lead to strife. The Supreme Court of the United States, in the case of *National Labor Relations Board v. Fruehauf Trailer Company*, 301 U. S. 49, (1937), recognized the propriety of condemning such activity as an unfair labor practice, and upheld an order of the Board requiring the employer in that case to cease and desist from, among other things, employing persons for the purpose of espionage within the union there involved.

3116

Aitchison testified that Johnstone was represented to be an expert in plant production problems, in efficient plant supervision, and in tool and machine work, and that he was hired as such. He admitted that Johnstone was instructed to make confidential reports to him, and that Johnstone's true function was not disclosed to his fellow employees. Aitchison alleged, however, that the object of this secret arrangement was not in any way to spy upon the union activities of the men, but rather was to get the ideas of an experienced and capable machinist on possible improvements in efficiency of the plant, including changes in personnel and equipment. Johnstone's reports were delivered weekly to Aitchison at the latter's home, and were burned as soon as read. Aitchison said that they dealt primarily with suggested transfers of supervisory personnel and with sundry minor improvements in working conditions. He admitted that four of the reports contained information on the activities of the Union, but said that only the names of the officers and speakers at Union meetings were revealed, and that he knew the names of the officers anyway. As a matter of fact, Johnstone's reports were made to the N. M. T. A., and then transmitted to Aitchison, during the month of October. Thereafter, due to the fact that the N. M. T. A. was subpoenaed to appear before the Senate Subcommittee investigating violations of civil liber-

ties, the reports were made directly to Aitchison. This appears from the testimony of one Abbott, an official of the N. M. T. A. We may reasonably wonder why the N. M. T. A. took pains to avoid having Johnstone's reports get into the hands of a committee investigating violations of civil liberties, if the reports were as innocuous as Aitchison would have us believe. Johnstone was discharged about December 1, 1936, allegedly because of certain domestic difficulties.

Aitchison was immediately followed on the witness stand by Abbott, office manager of the N. M. T. A. in Chicago. Abbott's testimony conflicted directly with Aitchison's on one point. Aitchison had testified that Johnstone was paid, in addition to the regular wages for machinist work, enough to make his total compensation $200 per month, and that all this was paid directly by the respondent to Johnstone, and not through the N. M. T. A. Abbott testified that the N. M. T. A. billed the respondent for $225 monthly, less the amount Johnstone earned as regular wages, and that the N. M. T. A. then paid Johnstone the difference between his wages and $200 a month. The N. M. T. A. kept $25 a month. The respondent offered thereafter no explanation of this discrepancy.

3117 It is interesting to note that employees who worked at machines in Johnstone's vicinity in the plant testified that he was a poor workman. In fact, even his foreman testified that Johnstone was "very poor," that he "could not do the work," and that he "was not mechanic enough." However, Johnstone did show aptitude at one function. He lost no time in joining the Union, attending meetings, inquiring as to the numerical strength of the Union, and suggesting to his fellow members that they strike. Kondrath testified that Johnstone was eager to attend all Union functions, that "he wouldn't miss a meeting on a bet." Here we find the plausible explanation of his presence. The familiar pattern of the labor spy emerges. His previous experience adds to the picture in this respect. According to Abbott's testimony, Johnstone had been haunting the N. M. T. A. offices in Chicago for about a year and a half previous to August 1936, seeking employment. The assignment to the respondent's plant was his first job for the N. M. T. A. His only known experience, aside from his claim to be a machinist and tool maker, was prior employment at Corporations Auxiliary Company and at the Sherman Service, both organizations having a history of labor espionage activities.

Upon all the evidence, we can reach only one conclusion.

We cannot believe that Aitchison was so poor at selecting personnel that he unwittingly employed Johnstone as an expert in the various lines indicated in the respondent's answer to the complaint. We conclude that he was hired as a labor spy and that one of his principal functions, to say the least, was to engage in espionage within the Union.

C. *Conclusions as to unfair labor practices prior to February 17, 1937.*

From the various events set forth above it appears that the respondent engaged in a consistent program, developed along varied lines, of both open and underhanded attack upon the efforts of its employees to exercise their right to self-organization. We find that by the anti-union statements and actions of Anselm on September 10 and September 21, by the campaign to introduce into the plant a company union, by the isolation of the Union president from contact with his fellow employees, and by the employment and use of Alfred Johnstone as a labor spy, the respondent has interfered with, restrained, and coerced its employees in the exercise of their right to self-organization guaranteed in Section 7 of the Act.

D. *The refusal to bargain collectively on February 17, 1937.*

The complaint alleges that the respondent engaged in unfair labor practices within the meaning of Section 8 (5) of the Act in refusing to bargain collectively with the Union on September 10 and September 21, 1936, on February 17, 1937, and at all times thereafter.

3118 1. The appropriate unit.

The complaint alleged that the production and maintenance workers, exclusive of supervisory, clerical, and laboratory employees, constitute an appropriate bargaining unit. The Union admits to membership all hourly paid employees of the respondent, excluding laboratory and engineering employees, supervisory employees and clerical employees. The respondent claimed that employees in the maintenance department, consisting of electricians, carpenters, and steam fitters, should not be included in the bargaining unit with the remainder of the hourly paid employees. However, we find no rea-

son for this proposed exclusion under the circumstances. Most of these employees were members of the Union, and some were extremely active members. No craft organization at any time purported to represent them in dealing with the respondent. We will include them in the unit.

We find that the hourly paid employees of the respondent, excluding laboratory and engineering employees, supervisory employees, and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to the employees of the respondent the full benefit of their rights to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the majority in the appropriate unit.

A count of the respondent's time cards made at the hearing, with deductions for those not properly belonging in the unit, revealed that on September 10 and September 21 there were at least 185 or 186 employees in the appropriate unit. Witnesses for the Union did not claim, and the evidence does not reveal that it had more than 91 members on either of those dates. While this lack of a majority precludes a finding of unfair labor practices under Section 8 (5) of the Act on those dates, it does not, of course, preclude findings of interference and coercion by the respondent on those occasions directed against "outside" unionization.

On February 17, 1937, the result is different. It was stipulated that there were on that date 229 employees in the unit we have found to be appropriate. This figure was based on the respondent's records. On behalf of the Union, there were introduced into evidence membership cards which were made available to the respondent's counsel for examination. The respondent checked the cards against its pay roll. The cards were withdrawn later in the hearing and lists of the signatories were admitted into evidence in substitution therefor.

After deducting from the list several employees shown 3119 to have left the respondent's employ prior to February 17, 1937, it appears that on February 17, 155 employees in the appropriate unit had, by signing membership cards, designated and selected the Union as their representative for purposes of collective bargaining. No evidence was introduced to show that any of these individuals had withdrawn from the Union on or before that date.

We accordingly find that on February 17, 1937, the Union had been designated as their bargaining representative by a clear majority of the respondent's employees in the unit above described as appropriate. Pursuant to Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain.

On the morning of February 17, a duly authorized bargaining committee from the Union once more met Anselm in his office. The committee informed him that as representatives of the employees in the plant, they desired recognition of the Union and collective bargaining. Anselm reaffirmed the respondent's policy of non-recognition of "outside" unions. At the request of the committee, he conferred with Aitchison and reported back, saying "Nothing doing. It stands as it is, everything." He suggested, however, that the committee return at 2 p. m. the same day. The committee returned at the appointed hour, and Anselm told them: "It is still the same. We can't recognize an outside union. If you fellows want to call it as a shop committee, why, we will give you collective bargaining, but under the leadership of outsiders, and the Amalgamated Association of Iron, Steel and Tin Workers, we will not." The committee withdrew after further discussion proved futile.

The respondent did not controvert the testimony relating to this refusal to bargain. It is significant that Anselm, far from attempting to question the committee as to whether they represented a majority of the employees, indicated a complete willingness to bargain with them if they would renounce their chosen union and assume the status of a shop committee. Coming after the series of blows at the Union described above, this refusal to bargain constituted an unequivocal and final defiance of the Act, and indicated clearly to the employees that the respondent had no intention of complying with the law.

We find that on February 17, 1937, the respondent refused to bargain collectively with the Union as the representative of its employees in respect to rates of pay, wages, hours of employment, and other conditions of employment. We
3120 also find that by such refusal the respondent interfered with, restrained, and coerced its employees in the exer-

cise of their right to self-organization and to collective bargaining through representatives of their own choosing, as guaranteed in Section 7 of the Act.

E. *The strike.*

Retiring from Anselm's office after the collapse of the attempt to bargain on February 17, the Union committee immediately reconvened in one of the plant buildings. It had been voted full authority by the Union to take such action as seemed appropriate if the respondent could not be induced to recognize the Union and engage in collective bargaining. It was testified that the members of the Union were becoming restive and demanding that the committee take vigorous action. The committee decided to take over and hold two of the respondent's "key" buildings. These buildings were thereupon occupied by about 95 employees. Work stopped, the foremen and women employees left at the request of the Union leaders, and those employees who did not desire to participate were permitted to leave. There was no violence. The remainder of the plant also ceased operations. This happened at about 2:30 in the afternoon. A number of the members of the Union who worked on the night shift and did not arrive for work until about 3 o'clock did not join their fellow members inside the buildings.

At about 6 o'clock that same evening, Anselm, accompanied by two police officials and Max Swiren, counsel for the respondent, went to each of the buildings and demanded that the men leave. They refused, and Swiren thereupon announced in loud tones that all the men in the plant were discharged for the seizure and retention of the buildings.

The men occupied the buildings until February 26, 1937. Their fellow members brought them food, blankets, stoves, cigarettes, and other supplies, the materials being passed into the plant, through windows after deputies stationed at the plant had inspected the bundles. The men in the plant kept the machines oiled as best they could. The only injuries to the plant and the equipment occurred on the occasions of two attempts to oust the employees. The respondent had, the day after the occupation began, secured an injunctional order against the men from the Circuit Court of Lake County, Illinois. This was read and posted at the plant. The men refused to leave the buildings, and a writ of attachment was obtained and served upon the men by the sheriff on February

19, 1937. Upon the men's refusal to submit to arrest, the sheriff and his deputies attacked the buildings with tear gas bombs, a battering ram, and baseball bats. The employees threw back nuts, bolts, spools, and other articles. Many windows were broken, some by the tear gas bombs thrown
3121 by deputies, some by the men in the plant in an attempt to secure fresh air and to combat the gas fumes. Some of the missiles thrown by the men were intended for the purpose of breaking the windows; others were undeniably aimed at the attacking deputies. While the equipment was damaged by this barrage, as well as by the deputies' bombs, there is no evidence that any malicious sabotage of the equipment took place.

The attack on the 19th was unsuccessful. Efforts at mediation on the part of the United States Department of Labor and the Governor of Illinois proved unavailing. On February 26 the sheriff and an increased force of deputies conducted another drive on the buildings. After a pitched battle similar to the one on the 19th, the men were ousted and placed under arrest. Most of them were eventually fined and given substantial jail sentences by the Circuit Court of Lake County for violating the injunction.

F. *The resumption of operations.*

As soon as the strikers were ejected from the buildings, the respondent began preparing to resume operations. The buildings were cleaned up, broken windows were replaced, some rusted machines were rehabilitated, and production gradually began. Aitchison gave Anselm *carte blanche* to restaff the plant with new employees in addition to such of the old employees as he desired to retain. Anselm told his various foremen to seek out those of the employees they wanted back, and to have both old employees and new applicants report to Anselm for interviews. Foremen approached a large number of old employees with individual offers of reemployment, including many Union members who had participated in the occupation of the buildings or helped to furnish supplies to those inside. Back pay for the period of the shut-down was offered and given to most if not all of those returning to work. A large number of new workers were hired.

Meanwhile the Union was not inactive. On March 3 a duly authorized Union committee presented to the respondent a

written request[6] for a meeting to consider recognition of the Union and collective bargaining. On the same day, Aitchison sent to the Union committee a written reply,[7] refusing to meet for the purposes specified. A number of reasons were given, including allegations that the Union was not a proper bargaining agency since the respondent was not in the iron, steel, or tin business, that many of the members of the Union had become such through duress, and that those who had participated in the sit-down strike were ex-employees. On March 5 the Union committee returned and presented another 3122 written request,[8] pointing out that the Union was "desirous of bringing about peace and a settlement of the strike now in progress," requesting recognition of the Union, and asking "that a conference be held between the company and the Union for the purpose of adjudicating the dispute." Aitchison replied in writing[9] once more on March 8, again refusing the Union's request for a meeting.

The respondent continued its individual offers of reinstatement to such of the employees as it wanted to take back. Some of the strikers capitulated and returned to work, receiving back pay for the period during which the plant had been closed. They did not resign from the Union, although a few testified that they considered that by going back to work they were abandoning it. Others refused to return without Union recognition and mass reinstatement of the strikers. A skeleton crew of about 30 or 40 began operations in some sections of the plant on March 1. By March 12 the restaffing of the plant was substantially complete and operations were approximately normal. The strikers were still out at the time of the hearing, when the plant was operating with a larger force than at the time the strike began.

G. *Conclusions as to the respondent's campaign to break the strike.*

The complaint alleged that by the announcement of discharge on February 17, and by the failure to reinstate the strikers upon the reopening of the plant, the respondent discriminated in regard to the hire and tenure of employment of the strikers, thereby discouraging membership in the Union

[6] Board Exhibit No. 25A.
[7] Board Exhibit No. 26.
[8] Board Exhibit No. 26A.
[9] Board Exhibit No. 28.

and engaging in unfair labor practices within the meaning of Section 8 (3) of the Act. In his Intermediate Report the Trial Examiner found that by failing to reinstate the strikers the respondent had, with a few exceptions, so discriminated against them.

We do not construe Swiren's announcement, coming as it did after the strike had begun, as a discriminatory discharge of the men in the plant. We are convinced by the record before us that this announcement was not so regarded by the strikers. The evidence does not show that they were deterred from applying for their jobs by reason of these assertions of Swiren. On the contrary, it was well known throughout the strikers' ranks that the respondent was taking back many of those who had occupied the plant. As a matter of fact the respondent did reinstate 35 of the sit-down strikers, or over one-third of the total. Emissaries of the respondent were actively seeking out individual strikers and imploring them to return to work. At the same time, the evidence clearly shows that the position of practically all of those strikers who 3123 did not go back, and who are named in the complaint, was that they were determined to stay out until the Union reached a settlement with the respondent. And we are unable to reach the conclusion that the Union committee, on March 3 or March 5, made a collective request for reinstatement of all the strikers. Rather, the committee on those dates requested collective bargaining and negotiations looking toward the settlement of the strike. The strikers were still holding out for the objectives for which they had originally struck.

It might be argued that since the Union was demanding as a condition to reinstatement only something to which they were entitled under the Act—recognition and collective bargaining—the respondent in illegally refusing this demand should be considered as discriminatorily refusing to reinstate the strikers. We do not take this view. So long as the employees were unwilling to return to work under the conditions existing at the time the strike was called,[10] however just the grounds on which their position was based, it cannot be said that the respondent was refusing to reinstate them.

While the record gives rise to a reasonable speculation that

[10] *Cf. Matter of American Manufacturing Company; Company Union of The American Manufacturing Company; The Collective Bargaining Committee of The Brooklyn Plant of The American Manufacturing Company and Textile Workers Organizing Committee, C. I. O.*, 5 N. L. R. B., No. 67.

the respondent would have refused to take back the strikers in a body, such a speculation, in the absence of a clear-cut request for reinstatement, cannot support a finding that the respondent refused to restore them to their jobs. We will dismiss the complaint in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act by discharging and refusing to reinstate the strikers.

What we have said above does not in any sense involve approval of the conduct of the respondent in connection with its strikebreaking campaign. By refusing to negotiate with the Union committee during the strike, it repeated its unlawful refusal to bargain collectively, and underscored its policy of hostility to the Union. The respondent cannot be heard to assert that the Union on March 3 and 5 no longer was the representative of the majority of the employees. The evidence does not show that any of the Union members had resigned by that time, and any defections from the Union's representative authority implied in the return to work of some of the members is clearly ascribable to the unlawful conduct of the respondent in continuing to rebuff all efforts of the Union to meet and settle the strike through negotiation. Any such defections may accordingly be disregarded.[11] By the Union leaders and appealing to individual strikers to return to work, the respondent engaged in unfair labor
3124 practices within the meaning of Section 8 (1) and (5) of the Act.

We may note in this connection that the respondent contends that it was under no duty to deal with the strikers due to the unlawful character of the sit-down strike. Under all the circumstances, we find no merit in this contention. We will discuss it more fully under the Section headed "The Remedy," in considering the question of whether the strikers' conduct was sufficiently indefensible to warrant us in not ordering them reinstated.

H. *Domination and interference with the Rare Metal Workers of America, Local #1.*

We have noted above that the respondent had resumed almost complete operations by about March 12. Early in April

[11] *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation) and Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B., No. 79. foregoing actions, as well as by going over the heads of the

a small group of employees went to Anselm's office and informed him that they contemplated the formation of an inside union in the plant. He told them that "under the labor act" they were entitled to organize. This temporary committee included Henry Berquist, who had been employed before the strike but who had not joined the Union, and Ted Sylvin and A. R. Johnson, both new men who were taken on after the sit-down. Sylvin was informally designated by the group as temporary leader of the movement.

A meeting was planned for April 15, at which a vote was to be taken on whether the employees desired an "independent" union in the plant. The respondent granted the use of one of its buildings for the meeting and readily permitted the use of its bulletin boards for announcements relating thereto. It may be noted in this connection that in August 1936, when the Union requested permission to use the respondent's bulletin boards for notices of meetings, the request was denied. But, for the meeting to consider an "independent" union, the respondent even supplied the typed announcements and mimeographed about 300 ballots, free of charge.

The meeting was held as scheduled, about 200 employees attended, and the balloting resulted in a vote of about 185 to 15 in favor of the formation of an "independent" organization. The ballots were placed in a box which was sealed and put in one of the respondent's vaults.

The temporary committee decided to incorporate the new organization. Application for a certificate of incorporation from the State of Illinois was made on April 17 and the certificate [12] was granted on the 19th. The name chosen for the organization was "Rare Metal Workers of America, Local #1." A petition was circulated among the employees, the signatories becoming charter members. Over 220 signatures were obtained within two or three days.

Another meeting was held, also in one of the respond-
3125 ent's buildings. Typed notices and use of the bulletin boards were again supplied by the respondent. Officers were nominated at this meeting, and an election scheduled. The slate of nominees and notices of the elections were posted on the respondent's bulletin boards. Ballots were mimeographed by the respondent. The election was held in the plant, ballot boxes being placed under the time clocks in two of the buildings. After the balloting was completed, the bal-

[12] Board Exhibit No. 31.

lots were placed in the respondent's safe. The new officers were installed, and some dues collected.

At the time of the hearing, the R. M. W. A. had had two meetings outside the respondent's property. By-laws [13] had been adopted, the provisions of which are most illuminating. Section 21 provides that "any member of this organization may bargain as an individual with the employer as to rates of pay and wages or working conditions or any other matter pertaining to his or her employment," and further provides for submission of any grievances on these matters to the Executive Board of the organization, whose action shall be final. The organization is, by the same article, forbidden to affiliate except upon a 75 per cent vote of its membership, and a like percentage of assent is required before a strike may be called.

On May 26 or 27 a committee from the R. M. W. A. met with Anselm, seeking recognition. Swiren, the respondent's counsel, was furnished the membership cards of the organization, and had photostatic copies made. He reported to Anselm at that meeting that "undoubtedly they had a majority, and under the law they deserved recognition, and we would recognize them." Recognition was granted. At the time of the hearing, which began shortly thereafter, the new organization had not engaged in any further negotiations with the respondent.

In considering the question of the legitimacy of the R. M. W. A., we must direct our attention first to the company union campaign conducted by the respondent before the strike. We have already described the scope of that campaign. Through the statements made by Anselm to the Union committee, through the copies of a model company union plan sent to each employee in an inter-office envelope, and through the circulation of a petition with which to obtain support for an "employee representation plan," the respondent's desire for an inside union in the plant was emphatically brought home to the employees. Despite this diligent attempt to undermine the Union, the company union drive collapsed.

After the reopening of the plant, with the bulk of the Union membership still out on strike, the respondent's prior efforts finally bore fruit. There appeared an inside organiza-
3126 tion obviously of a pattern calculated to meet with the respondent's full approval. The respondent, not resting

[13] Board Exhibit No. 42.

on its previous announcements and actions in favor of an inside organization, made certain that its warm feeling toward this new movement was made evident. Favors were readily granted to the R. M. W. A., in significant contrast to the hostility with which it had previously responded to the appearance of the Union. The Union's committee had met with unyielding resistance on the part of Anselm, who had abruptly ordered from his office the "outside" representative selected by the Union to serve on its committee; the R. M. W. A. was welcomed and readily granted recognition. The Union had been denied the use of the respondent's bulletin boards for announcements of meetings; this favor was at once bestowed upon the R. M. W. A. An attempt had been made to poison the Union ranks by the injection therein of a labor spy, far from using espionage against the R. M. W. A., the respondent granted it the use of a company building and furnished it free typing and mimeographing services. The prior drive to induce the employees to abandon the Union in favor of an employee representation plan quite naturally had no counterpart when the R. M. W. A., an organization modelled to comply with the respondent's desires, appeared on the scene. In general, the contrast between the respondent's well-publicized animosity toward the Union and its open affection for the R. M. W. A. was so clear and striking that it must necessarily have prevented freedom of choice by the employees.

Upon all the evidence, we find it impossible to conclude that the R. M. W. A. has been freely selected by the employees, unfettered by company interference. We must conclude that the R. M. W. A. is the result of the respondent's anti-union campaign, and that it has received support from the respondent.

We find that the respondent has dominated and interfered with the formation and administration of the R. M. W. A., and has contributed support to it, and has thereby engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a

close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY.

3127 Having found that the respondent engaged in various unfair labor practices we must, in order to effectuate the policies of the Act, restore as fully as possible the situation that existed prior to the respondent's unlawful conduct.

One obvious requisite is that the strikers be restored to their jobs upon application by them, unless the surrounding circumstances are such that we should not exercise our power, equitable in nature, to order such restoration. It is contended that the conduct of the strikers in engaging in the sit-down strike and in refusing to vacate the buildings in response to the injunction, relieves the respondent of any obligation toward the participants, including those who brought supplies to the men in the plant. In making this contention, however, the respondent does not come before the Board with clean hands. On the contrary, as we have found above, the respondent is guilty of gross violations of law, violations which in fact were the moving cause for the conduct of the employees.

There can be no doubt that the direct and immediate cause of the strike was the illegal activity of the respondent. Nor can there be any question as to the gravity of the respondent's unlawful course of action. While the Act imposes no criminal penalties for unfair labor practices, it expresses an important national policy. If judicial authority be needed for condemning the refusal to bargain, the highest is available. In the case of *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 42 (1937), the Supreme Court of the United States, speaking through Chief Justice Hughes, stated:

> Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances.

Even assuming that the striker's conduct was violative of certain State laws carrying criminal penalties, we cannot say

that the respondent is therefore guilty in any lesser degree. One who engages in persistent and open defiance of a national law cannot be heard to assert that the retaliatory conduct of his employees in seeking to secure their rights is necessarily a bar to their reinstatement. We have, in some cases, declined to order reinstatement of striking employees despite the fact that the strike was caused by the employer's unfair labor practices. In one such case, the striker in question had been indicted for shooting and wounding a fellow employee during the course of the strike.[14] In another, six strikers had pleaded guilty to a felony involving conspiracy to destroy property, and two had pleaded guilty to the felony of
3128 stealing dynamite and converting it to their own use; all eight had been sentenced to a maximum of ten years in jail.[15] It cannot be said that the conduct of the strikers in the present case is analogous to the conduct in these instances. They were not engaged in sabotage. Under the circumstances, we do not feel that the respondent's contention should prevail. Furthermore, in view of the fact that the respondent did take back a large number of the sit-down strikers, we find it difficult to believe that the respondent's objection on that score is put forward in good faith.

The outstanding fact revealed by this record is that, had it not been for the respondent's illegal conduct, the orderly processes of collective bargaining, which the Act is designed to encourage, would have taken place. After giving the fullest consideration to the question, our conclusion is that the strikers should be reinstated upon application, and we will so order.

In this connection we may note the respondent's further contention that certain of the strikers were not called back because of inefficiency, and others because the departments in which they worked had been reorganized upon the resumption of operations and their jobs thereby abolished. We need not concern ourselves with these allegations, in view of the fact that we are not finding that such workers were discriminatorily discharged or denied reinstatement. In fulfilling its duty to restore the status quo, the respondent will be ordered to reinstate upon application all the strikers; after this has been done, it may reorganize or reduce its staff

[14] *Matter of Kentucky Firebrick Company and United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B., No. 46.

[15] *Matter of Standard Lime & Stone Company and Branch No. 175, Quarry Workers International Union of North America*, 5 N. L. R. B., No. 15.

in any non-discriminatory fashion it deems necessary, subject to any modification introduced by agreement with the Union. In reinstating the strikers upon application, the respondent must dismiss, if necessary, employees hired for the first time during the strike. This is in accordance with our usual practice in cases where strikes are caused by unfair labor practices.

We shall also order the respondent to bargain collectively with the Union upon request. It is true that at the hearing it was testified that a majority of the workers in the plant had become members of the R. M. W. A., and that there was some evidence that certain of the employees had tacitly abandoned their Union membership by deserting the strikers' ranks and returning to work. However, we have found that the R. M. W. A. is not the free choice of the employees, that it is company-dominated, and that the strike-breaking campaign of the respondent, through which a number of strikers were induced to return to work individually, was in violation of law. We have also found that by February 17, 1937, the Union was the representative of a clear majority of the employees in the appropriate unit. To refrain from ordering the respondent to bargain collectively with the Union under 3129 these circumstances would be to permit the respondent to profit by its own wrongdoing. Such a frustration of the purposes of the Act cannot be tolerated, as we have said in previous cases involving analogous circumstances.[16] When an employer illegally denies to the representatives of his employees the right of collective bargaining, effectuating the purposes of the Act requires that he be commanded to deal with them upon request. We shall, of course, order the respondent to withdraw all recognition from the R. M. W. A. as the bargaining agency for its employees.

The Trial Examiner recommended that back pay starting on March 12, 1937, be awarded the workers against whom he found the respondent had unlawfully discriminated. Since we have not found this discrimination to be shown by the evidence before us, we shall not follow this recommendation. However, the strikers will be entitled to back pay beginning with any refusal on the part of the respondent to reinstate them upon application in accordance with our order.

[16] *Matter of Atlas Mills, Inc. and Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N. L. R. B., No. 3; *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation) and Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B., No. 79.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of Law.

1. Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 66, and Rare Metal Workers of America, Local #1, are labor organizations, within the meaning of Section 2 (5) of the Act.
2. The respondent, by dominating and interfering with the formation and administration of, and contributing support to, the R. M. W. A., has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.
3. The hourly paid employees of the respondent, excluding laboratory and engineering employees, supervisory employees, and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
4. The Union was on February 17 and March 3 and 5, 1937, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
5. By refusing and continuing to refuse to bargain collectively with the Union as the exclusive representative of the employees in the above stated unit, on February 17 and March 3 and 5, 1937, the respondent has engaged in
3130 unfair labor practices, within the meaning of Section 8 (5) of the Act.
6. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.
8. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

ORDER.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fansteel Metallurgical Corporation, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) Dominating or interfering with the formation or administration of Rare Metal Workers of America, Local #1, or any other labor organization of its employees, or contributing support to any such labor organizations;

(c) Refusing to bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees, excluding laboratory and engineering employees, supervisory employees, and clerical employes;

(b) Upon application, offer to those employees who went on strike on February 17, 1937, and thereafter, immediate and full reinstatement to their former positions, without prejudice to thir seniority or other rights or privileges,
3131 dismissing, if necessary, all persons hired since February 17, 1937;

(c) Make whole all employees who went on strike on February 17, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during

the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Withdraw all recognition from Rare Metal Workers of America, Local #1, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Rare Metal Workers of America, Local #1, as such representative;

(e) Post immediately in conspicuous places in its plant at North Chicago, Illinois, and maintain for a period of at least thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid, and that recognition is withdrawn from the R. M. W. A. as ordered above;

(f) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

3107 NATIONAL LABOR RELATIONS BOARD.

Docketed Mar. 14, 1938.

* * (Caption—C-235) * *

AFFIDAVIT AS TO SERVICE.

District of Columbia, } ss.

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 14th day of March, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Mr. Lester Collins
218 Washington Street
Waukegan, Ill.

Mr. Max Swiren
Suite 2525
One North LaSalle Street
Chicago, Ill.

Bertram Katz.

Subscribed and sworn to before me this 14th day of March, 1938.

(Seal) Harold G. Wilson,
Notary Public, District of Columbia.

My commission expires May 15, 1941.

3132 Return Receipt

(Stamp) Washington, D. C. Mar 17 7:30 PM 1938.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Lester F. Collins
(Signature or name of addressee)

Olga Maslawski
(Signature of addressee's agent)

Date of delivery ...., 19.....

Form 3811

Penalty for Private Use to Avoid Payment of Postage $300

(Stamp) Waukegan Mar 15 6 P M 1938 Ill.

Post Office Department	(Postmark of Delivering)
Official Business	(Office)
	( )
Registered Article	( )
No. 69498	( )
Insured Parcel	( )
No.	( )

Return to National Labor Relations Board
(Name of Sender)

Street and Number, or Post Office Box .....
Washington,

D. C.

1974 *Return Receipt.*

3133 **Return Receipt**

(Stamp) Received Mar 16 1938 National Labor Relations Board.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Max Swiren
(Signature or name of addressee)

F. C. McCrum
(Signature of addressee's agent)

Date of delivery Mar. 15, 1938.

Form 3811

Penalty for Private Use to Avoid Payment of Postage $300

(Stamp) Old P.O. Annex Mar 15 2 PM 1938 Chicago, Ill.

Post Office Department
Official Business

Registered Article
No. 69497
Insured Parcel
No. .....

(Postmark of Delivering Office)

Return to National Labor Relations Board
(Name of Sender)

Street and Number, or Post Office Box .....

Washington,

D. C.

3134 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Fansteel Metallurgical Corporation, *Petitioner,*
vs.
National Labor Relations Board, *Respondent.*
} Case No. 6606.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

The National Labor Relations Board, by its Assistant Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66", the same being Case No. C-235, before said Board, such transcript including the pleadings, testimony, and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66, and sworn to September 15, 1936.
2. Amended charge filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, on May 21, 1937.
3. Complaint and notice of hearing issued by the National Labor Relations Board on May 25, 1937.
4. Motion of Fansteel Metallurgical Corporation for an extension of time to file its answer, and for an adjournment of hearing date, together with affidavit in support of said motions.

3135 5. Copy of order granting extension of time to file answer and denying motion to adjourn date of hearing, dated May 29, 1937.

6. Answer of Fansteel Metallurgical Corporation.
7. Application of Fansteel Metallurgical Corporation for subpoenas and subpoena duces tecum, sworn to on the 3rd of June, 1937.
8. Certified copy of order designating Tilford E. Dudley, Trial Examiner, dated June 3, 1937.
9. Certified copy of order denying application for subpoenas and subpoena duces tecum, dated June 10, 1937.
10. Copy of renewal of application for subpoenas and subpoenas duces tecum.
11. Amendment to answer of Fansteel Metallurgical Corporation, sworn to on the 22nd day of June, 1937.
12. Copy of order granting in part and denying in part application for subpoenas and subpoenas duces tecum, dated June 25, 1937.

Documents listed hereinabove under items 1-11, inclusive, are contained in the exhibits and included under the following item:

13. Stenographic transcript of testimony before Tilford E. Dudley, Trial Examiner of the National Labor Relations Board, on June 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, and 25, 1937, including all exhibits introduced in evidence.
14. Copy of intermediate report of Trial Examiner Dudley, dated September 2, 1937.
15. Copy of application of Fansteel Metallurgical Corporation for extension of time for filing exceptions.
16. Copy of telegram, dated September 10, 1937, denying request for extension of time for filing exceptions.
17. Copy of exceptions filed by Fansteel Metallurgical Corporation.
18. Copy of Union's motion to extend time of filing exceptions.
19. Copy of objections and exceptions of the Union, received September 20, 1937.

3136 20. Copy of order of National Labor Relations Board, dated October 9, 1937, accepting exceptions of Union.

21. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board dated March 14, 1938, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Assistant Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the

seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 1st day of April, 1938.

Beatrice M. Stern,

(Seal) *Assistant Secretary. National Labor Relations Board.*

3137 Endorsed: Filed Apr. 4, 1938. Frederick G. Campbell, Clerk.

ITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court f Appeals for the Seventh Circuit, do hereby certify that the fore- ing printed pages, numbered from 1297 to 1977, inclusive, contain a e copy of Volume III of the printed record, printed under my pervision and filed on the twelfth day of April 1938, which to- her with Volume I and II, certified herewith under a separate rtificate, constitute the record upon which the following entitled se was heard and determined: Fansteel Metallurgical Corporation, etitioner vs. National Labor Relations Board, Respondent, No. 6606, ctober Term, 1937, as the same remains upon the files and records of e United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the al of said United States Circuit Court of Appeals for the Seventh rcuit, at the City of Chicago, this 27th day of September A. D. 38.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals r the Seventh Circuit, begun and held in the United States Court oom in the City of Chicago, in said Seventh Circuit, on the fifth day f October 1937, of the October Term, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-second.

6606

FANSTEEL METALLURGICAL CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for Review of the Decision of the National Labor Relations Board

And, to-wit: On the sixteenth day of May 1938, the following further proceedings were had and entered of record, to-wit:

Monday, May 16, 1938

Court met pursuant to adjournment

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. WALTER E. HENNOR, Circuit Judge; Hon. WALTER C. LINDLEY, District Judge.

6606

FANSTEEL METALLURGICAL CORPORATION

vs.

NATIONAL LABOR RELATIONS BOARD

Petition for Review of Order of the National Labor Relations Bo

Now this day come the parties by their counsel, and this ca comes on to be heard on the transcript of the record, and the bri of counsel, and on oral argument by Mr. Max Swiren, counsel f Petitioner, and by Mr. Lawrence Hunt, counsel for Respondent, a the Court having heard the same, takes this matter under advisem

And afterwards, to-wit: On the twenty-second day of July 19 there was filed in the office of the Clerk of this Court, the Opinion o the Court, which said Opinion is in the words and figures followin to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6606. October Term, 1937, April Session, 1938

FANSTEEL METALLURGICAL CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for Review of Order of National Labor Relations Board

June 22, 1938

Before SPARKS and TREANOR, Circuit Judges, and LINDLEY, District Judge.

SPARKS, Circuit Judge. This is a statutory proceeding for a review of an order of the National Labor Relations Board. The order was entered by the Board on March 14, 1938, under the National Labor Relations Act of 1935, 29 U. S. C. A., chapter 7, and the petition was filed pursuant to section 10 (f) of that Act. 29 U. S. C. A., section 160 (f).

The order was the result of the filing on September 15, 1936, of a general charge of unfair labor practices affecting commerce, against petitioner, by local 66 of the Amalgamated Association of Iron, Steel and Tin Workers of America, and the filing, on May 21, 1937, of an amended charge specifically setting forth unfair labor practices in violation of section 7, and subsections 1, 2, 3, and 5 of section 8 of the Act. On May 25, 1937, the Board issued a complaint against petitioner, and gave notice of a hearing to be had on June 7, 1937, at Waukegan, Illinois.

The complaint alleged, in substance, that the petitioner had engaged and was engaging in unfair labor practices affecting commerce within the meaning of section 8, subdivisions (1), (2), (3), and (5) and section 2, subdivisions (6) and (7) of the National Labor Relations Act, in that (a) petitioner hired one Alfred Johnstone, an agent and operative of the National Metal Trades Association, for the purpose of espionage, intimidation, interference, spying, and reporting upon the activities and membership of petitioner's employees in the Union; (b) petitioner employed one A. J. Anselm as superintendent of its plant for the purpose, among other things, of breaking up the Union; (c) petitioner physically isolated one of its employees, John Kondrath, who was president of the Union, from the other employees at the plant, and forbade him to associate or talk with them; (d) petitioner on September 10 and 21, 1936, and February 27, 1937, and at all times thereafter, refused to bargain collectively with the Union as representative of its employees although for some time prior to September 10 and at all times thereafter the Union had been designated by a majority of petitioner's employees in the appropriate unit as their representative for collective bargaining; (e) petitioner on September 10, 1936, and thereafter attempted to organize a labor organization among its employees and to that end threatened its employees with loss of employment if they failed to join such organization; (f) petitioner on or about February 27, 1937, and thereafter until the issuance of the complaint, sent various persons to the homes of its employees who because of the foregoing unfair labor practices had theretofore, on February 17, gone on strike, and offered to reinstate such employees as individuals if they would abandon the rights guaranteed them by section 7 of the Act; (g) petitioner on February 17, 1937, discharged 92 named employees, and on February 27, 1937, and thereafter, refused to reinstate them, because of their Union affiliation and organizational activities; (h) petitioner on and after February 27, 1937, caused to be organized, and dominated, supported, and interfered with, a labor organization of its employees known as Sheet Metal Workers of America, Local No. 1.

Petitioner answered, denying all the allegations of the complaint, and averred with respect to the alleged discharge of employees that it had discharged and refused to reinstate them for cause, in that during and in connection with the strike they had seized petitioner's plant and by force and violence retained possession of it and resisted arrest; that the persons engaged in the illegal seizure and occupancy of petitioner's buildings on February 17, 1937, were on that date, upon their refusal to vacate the premises, discharged for the seizure and retention of the plant and for no other reason; that petitioner was under no duty to reinstate those who had either participated in the plant seizure and been discharged therefor on had aided and abetted in the illegal and violent retention of the plant with full knowledge of the injunction; that petitioner was not obliged to reinstate certain of the individuals named in the complaint by reason of their

inefficiency in performing their required duties; that petitioner's pl
had undergone an internal reorganization in which there had b
abolished, for efficiency purposes, a number of positions form
occupied by certain of the persons named in the complaint; th
Lodge 66 was not on the dates in question the bona fide repres
tive of a majority of its employees and accordingly was not t
proper bargaining agency; and that Rare Metal Workers of Amer
Local No. 1, was organized and conducted without any suppo
domination, or interference from petitioner.

Pursuant to the notice the hearing was had before a Trial E
aminer who, on September 2, 1937, filed his report finding that pe
tioner had engaged in and was engaging in unfair labor practic
within the meaning of section 8, subdivisions 1, 2, 3, and 5, of th
Act, and recommended that petitioner cease and desist from su
practices and take certain affirmative action to remedy them. A ge
eral statement of the facts adduced before the Examiner will be he
ful in appraising the Board's findings and conclusions.

The petitioner was and is engaged in the production, processing
and fabrication of rare metals in North Chicago. In its principa
departments its work is highly technical and scientific. During th
summer of 1936 Local 66 was formed by a small group of petitioner's
employees, with the aid of field representatives of the Amalgamated
Association of Iron, Steel and Tin Workers of America. Follow-
ing a membership drive a committee of Local 66 met with petitioner's
plant superintendent, Anselm, on September 10, 1936. It presented
a contract containing provisions for regulation of working condi-
tions, a closed shop, check-off system, and recognition of the union.
The superintendent objected to the closed shop and check-off provi-
sions. He also took exceptions to the recognition of an outside union
and asked the committee to consider an employees' representation
plan. The closed shop demand was subsequently withdrawn, but the
superintendent declined to acquiesce in the other demands. The com-
mittee, accompanied by its organizer, called again on September 21,
1936, but no agreement was entered into. On neither of these dates
did Local 66 represent a majority of petitioner's production and
maintenance employees, which was the unit for which the demands
were made.

No further meetings were held or requested until February 17,
1937. That morning a large committee of Local 66 presented to
Anselm a request for recognition of their union. He rejected the
request and suggested that they return at 2 P. M. They returned
at that time, and he announced there was no change in the company's
position. He questioned the constitutionality of the National Labor
Relations Act and called their attention to the fact that the Supreme
Court had not yet ruled upon its validity. No agreement having been
reached, the committee withdrew and held a brief secret meeting in
the chemical building, wherein it was determined to engage in a sit-
down strike.

Within half an hour after the afternoon conference began, about one hundred men seized two key buildings of the plant. Foremen and other employees were requested to leave with the warning that they had better do so peaceably. The buildings were then locked and barricaded from the inside, which effected a complete stoppage of the operations of the entire plant.

About four hours after the seizure, Anselm, accompanied by the company's counsel and two police officials, sought entrance into the buildings and demanded surrender of possession. Upon the occupants' refusal, counsel for the petitioner, by order of its president, announced to the occupants in loud tones that all of the men remaining within the buildings were discharged for the violent seizure and detention of the buildings. It was stipulated that at the time of such discharge the number of occupants, their identity and their union affiliations, if any, with eight or ten exceptions, were totally unknown to petitioner or anyone connected with its management, and that the discharge was a blanket discharge of all the men then in occupation of the buildings.

That same evening there were passed into the buildings written notices that the next morning petitioner would apply to the Circuit Court of Lake County, Illinois, for a temporary injunction against the continued illegal occupancy of its property. This was done, and after a hearing, at which counsel for Local 66 and the individual defendants appeared and were heard, the court found that the seizure and occupancy were illegal. Thereupon a mandatory injunction was issued directing the occupants of the buildings to vacate them and restore possession to petitioner. The sheriff, accompanied by several deputies, went to the buildings and attempted to gain entrance to serve and execute the writ, but all were refused by the occupants. The sheriff and his deputies then read the writ to the occupants, and passed copies of it into the buildings through the open windows. The occupants refused to comply with the injunction and announced their intention to remain in the buildings. Thereupon the court issued a writ of attachment for the occupants to show cause why they should not be held in contempt. On the morning of February 19, 1937, the sheriff, accompanied by about one hundred deputies, attempted to serve the writ. They read it to the occupants, but they refused to come out of the building. Thereupon the officers attempted to force an entrance into one of the buildings. With axes and battering-rams they succeeded in breaking down one door, but they were met by pressure streams of fire extinguishing chemicals fed from large tanks and directed by the occupants. At the same time the occupants in the upper floors of both buildings began bombarding the officers with large quantities of sulphuric acid and heavy steel and iron missiles, including pipes, bolts, nuts, reamers, wire reels and sharp end tools. The sulphuric acid was poured from the windows and hurled in quart bottle containers at the officers, as a result of which some of the officers were burned by the acid, and others were

injured by the missiles. To protect his men, the sheriff withd
and employed tear gas in an effort to dislodge the occupants. T
served only to increase the intensity of the barrage of missiles
acid, and the officers were compelled to leave without carrying
the court's order.

The sit-down strikers continued their occupancy of the buildin
until the morning of February 26, 1937, when the officers again
turned and attempted to gain entrance. This was met by a li
resistance of the occupants, but more violent in its character.
was stipulated at the hearing that the officers were then compell
to use tear and emetic gas, and by so doing they succeeded in a
complishing the eviction, and restoring possession to the petitione
It was further stipulated that fourteen of the men named in th
Board's complaint, knowing of the injunction, procured and deliv
ered to the occupants the food, equipment and supplies which enable
them to retain possession of the buildings. Sixty-six of the me
named in the complaint were admittedly participants in the seizure
and retention of the plant, and had full knowledge of the injunction.

After their eviction those occupants who could be found were seized
by the sheriff under the writ of attachment, and were subsequently
tried for contempt by the Circuit Court of Lake County. Thirty-
seven of the men who participated in the seizure of the plant were
convicted and fined in sums ranging from $100 to $300, and sentenced
to jail imprisonment for respective terms ranging from ten to one
hundred eighty days. An appeal from this judgment was prosecuted
to the Appellate Court of Illinois, and the judgment was affirmed
May 10, 1938. Fansteel Metallurgical Corporation v. Lodge 66 of
Amalgamated Ass'n of Iron, Steel, and Tin Workers of North
America, et al., 14 N. E. (2d) 991. The hearings on contempt with
respect to the other occupants were continued until further order
of the court. There ensued a full hearing on the merits of the case
and a decree was entered adversely to the defendants in that case.
No objection to that decree was interposed, and no appeal therefrom
has been prosecuted.

The record discloses the following losses directly suffered by the
petitioner, as a result of the men's participation in the seizure, retain-
ing possession of the plant, and resistance to the officers. Most of the
windows and many of the sashes were broken to obtain air in com-
batting gas, and to provide openings for throwing missiles at the
officers. Numerous small tools and parts were lost; large quantities
of acid, 50,000 valuable contact points and other inventory materials
were lost or rendered useless by being dropped from the windows;
two furnaces were permitted to cool rapidly and burn out; foamite
and other chemicals from the fire extinguishers damaged the buildings
and ruined a large Niagara shear; and other physical injury was oc-
casioned by the use of the buildings for living quarters. Uncontra-
dicted evidence of petitioner's president disclosed that the injury to
buildings, equipment, and inventory amounted to more than $10,000;

the loss of fixed charges and overhead expense amounted to $20,000; and loss through inability to make shipments amounted to $30,000. Within ten days after the eviction, operations were resumed, and the president made the following statement: "* * * From a preliminary inspection and survey of plants three and five, we have arrived at the tentative conclusion that:

(1) There has been no major injury to the machinery itself.

(2) Materials, parts, and supplies of an approximate value of $5,000 have been destroyed or otherwise rendered useless.

(3) Physical injury to the buildings themselves, including broken window panes, has resulted in damage of approximately $7,500. * * *

"All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the 80 men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for re-employment from such men will receive favorable consideration.

"We cannot condone the defiance of the courts or the resistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant. * * *"

Twelve of the men who had voluntarily left the buildings before the eviction, and twenty-three who remained until evicted, filed applications for re-employment and were hired. None of those sentenced for contempt was re-employed. Many old employees returned and the vacant places were filled by new applicants. Sixty-one men and women who returned to work were members of Lodge 66, and were reinstated without any condition as to union membership or activity. When the plant was reopened changes were made in the interest of more economical operation. As a result thereof numerous jobs were abolished, others were materially altered and substantial savings were effected in many departments.

About the middle of April 1937, hourly production employees of appellant organized the Rare Metal Workers of America, Local No. 1. Supervisory employees did not directly participate either in the organization of that union, or the management of its affairs. However, petitioner did suggest the organization of such a union, and expressed its approval of Local No. 1, when informed of its inception. Local No. 1 was accorded the use of petitioner's mimeograph machine for printing ballots, and the use of its bulletin boards for posting notices. Its two first meetings and its election for selecting a bargaining agent were held in petitioner's buildings, and immediately thereafter it was recognized by petitioner as the collective bargaining agent for the employees, although the Lodge never attempted to bargain with petitioner.

The Board found that approximately seventy per cent of the petitioner's business constituted or directly affected interstate or foreign

commerce; that petitioner employed a labor spy to engage in es
onage within the Union, and physically isolated its president fr
the other employees at the plant, thereby interfering with, restrain
and coercing the employees within the meaning of section 8 (1)
the Act; that on February 17, 1937, and at all times thereafter
majority of petitioner's employees within the unit found by t
Board to be appropriate, had designated the Union as their collecti
bargaining representative, within the meaning of section 8 (5)
the Act; that, as a result of the foregoing labor practices, the em
ployees went on strike on February 17, 1937, taking over and holdi
from that date until February 26, two of petitioner's key building
on which last date they were evicted by the officers, pursuant to a
injunction issued by the state court; that although the strikers re
sorted to violence in resisting arrest and eviction by the officers, n
sabotage of equipment occurred; that at the outset of the strike peti
tioner announced that all strikers who remained in the plant were
discharged, but that this did not constitute a discharge in fact, and
the strikers at all times remained employees of petitioner; that on
March 3 and 5 petitioner again refused to bargain collectively with
the Union, but sent agents among the strikers to certain of those
who had participated in the sit-down strike and resisted eviction, as
well as others, requesting them to return to work, individually, under
the conditions existing at the time the strike was called; that at the
time of the hearing, although the plant had then been reopened and
in operation for several months, the 92 strikers named in the com-
plaint were still out on strike. Many of them had refused the solici-
tation of petitioner's agents to return to work, insisting that before
they would do so petitioner first should recognize the Union and
bargain collectively with it.

It was further found that petitioner had dominated and interfered with the formation and administration of the Rare Metal Workers of America, Local No. 1, and had contributed support to it, in violation of Section 8, (2) of the Act.

The Board found that none of the persons named in the complaint was discharged or denied reinstatement by reason of union membership or activity, and the discharge of the men in occupancy of the buildings for their seizure and retention of the petitioner's plant was held not to constitute a discriminatory discharge.

It also found that neither on September 10 nor on September 21, 1936, did Lodge 66 represent a majority of the employees in the appropriate unit.

On February 17, 1937 (the day of the plant seizure), membership in Lodge 66 was found to exceed a majority of the employees in the appropriate unit, and the Board held that by failing to bargain with Lodge 66 on that date petitioner engaged in an unfair labor practice. The decision states that while some of the employees returning to work may have abandoned membership in Lodge 66, the petitioner must nevertheless now recognize and bargain with Lodge 66 as the representative of all of its employees.

Having found that the petitioner failed to bargain collectively with Lodge 66 on the day the sit-down strike occurred, the Board ordered the status quo on that day restored. The petitioner was directed, upon application, to re-employ all individuals who ceased work on that day.

The Board declined to award any back pay upon the grounds that the petitioner had not been guilty of discrimination and no application for reinstatement had been made. On the matter of reinstatement the Board's decision made no reference to the discharge. It merely required reinstatement of all who ceased work on February 17, regardless of their conduct, including the thirty-seven who were convicted and sentenced, upon the ground that petitioner's failure to bargain on February 17 was the moving cause of the employees' conduct. With the internal reorganization and resultant continuance of jobs the Board took no notice other than to suggest that after the reinstatement as ordered the petitioner might then reorganize or reduce its staff.

The record in this case is voluminous, and our problem is to determine whether there is substantial evidence to support the findings that petitioner violated the provisions of section 7 and section 8, subsections (1), (2), and (5), of the Act.[1] A perusal of the evidence convinces us that there is substantial evidence to support the finding that petitioner employed men to engage in espionage within the Union and thus interfered with, restrained, and coerced its employees within the meaning of section 8 (1). It may also be said that there is substantial evidence to support the finding that petitioner contributed support to the organization of the Rare Metal Workers of America, Local No. 1, in violation of the literal interpretation of section 8 (2). With the weight of the evidence on these questions we are not permitted to concern ourselves.

With respect to the Board's findings and conclusions relating to petitioner's violation of section 8 (5) we are unable to concur, because some of the facts upon which the conclusions are said to be based are not only not supported by substantial evidence but the contrary is undenied. The difference of opinion in this respect arises over the questions whether petitioner had good cause to discharge the sit-down strikers on February 17, and, if so, did the petitioner at that time discharge them? There seems to be no denial by the Board that there was ample cause for discharge. Indeed, in the argument

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[1] Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *.

before this court the Board admitted that the men in conducting sit-down strike and resisting the officers "did a foolish and ille act." Certainly it cannot be denied that an employer is warran in discharging his employees and severing that relationship when th take and retain exclusive possession of his property against his w They had a complete and adequate remedy, without cost to them, the hands of the Board, by the use of which they would have l nothing in time or wages, if their cause were just. The employ had no coordinate right in this respect. The employees, howeve spurned this legal remedy, disregarding all law on this subject, a essayed to settle the difficulty according to their own sense of rig and justice and contrary to the better thought of those who reall have at heart the best interests of all laborers. In this they violate the law which they now seek to enforce against petitioner. We a convinced that petitioner was warranted in discharging the em ployees, and we are compelled to so hold in order to avoid placing our approval upon such activities as they engaged in. To do other- wise would be an injustice not only to the employer but to the unions and their friends who wish them well.

Appellee contends that the petitioner did not actually discharge the employees. It is not denied, however, that it told them they were discharged, and why. The reason given was not that they were strik- ing, or that they were members of a union, or that they were attempt- ing to organize petitioner's plant, or that they were seeking to bargain with it with respect to wages, hours, or conditions, but, in language which could not be misunderstood, they were notified that it was be- cause of their violent seizure and retention of the buildings. The Board seeks to parry the force of this notice by finding that petitioner did not really intend it as a discharge, and that the occupants did not think that it was so intended. This conclusion is not claimed to be based upon any direct statement to that effect by any representative of the company, but upon certain subsequent circumstances from which it is said petitioner's negative intention may rationally be inferred. For instance, it is said, and truly, that petitioner after- wards re-employed many of these occupants, some of whom actually participated in the illegal acts, thus disclosing that petitioner never intended to discharge them. We think this is a non-sequitur. It is undisputed that petitioner at all times believed that more than fifty per cent of the occupants were compelled to participate in the seizure through coercion and intimidation, and it stated that applications for re-employment from such men would receive favorable considera- tion. The word re-employment would seem to indicate a former dis- charge and severance of relationship, at least it is not inconsistent with such indication. While several of the men who participated in the violence were also re-employed, yet, for the same reason we think that fact does not militate against the uncontradicted evidence that they were all discharged on February 17. It is also worthy of note that the fact that those re-employed were union men, or had been,

ould certainly support petitioner's contention that they were not charged because of union membership, or lawful union activities. It is further suggested by respondent, we suppose by way of mitigating circumstances, that the men were not engaged in sabotage, and that no malicious sabotage of equipment occurred. Both of these things were made, and we think neither was supported by substantial evidence. Indeed, the contrary was supported by undisputed evidence. True, there was evidence to the effect that there was no major or serious injury to the machinery, but machinery is not the only item of a plant that may be the subject of sabotage, and it does not constitute the entire equipment of a plant. Malice may be either express or implied. It may be implied from acts themselves. Within the meaning of the law it includes not only hatred and revenge, but every other unlawful and unjustifiable act. It is not confined to ill-will towards an individual, but it is intended to denote an action flowing from any wicked and corrupt motive; a thing done with a wicked mind, and attended with such circumstances as plainly indicate a heart regardless of social duty and fully bent on mischief. Here we have an admitted illegal seizure and retention of property, intentionally perpetrated; and intentional destruction of property with respect to the plant and portions of its equipment, supported by undisputed evidence. This we think conclusively shows a heart regardless of social duty and bent on mischief. But whether or not there was sabotage is not decisive of this case. Without it there still remained to petitioner a valid cause for discharge, which is supported by uncontradicted evidence, admitted by counsel in argument and not denied in the findings. Neither is it denied, but it is admitted, that petitioner told the men on February 17, that they were discharged, and we think this can not be brushed aside by a finding that petitioner did not intend to discharge them, based only on the fact that it afterwards re-employed some of them. This being true, the occupants of the building who were discharged on February 17 were no longer employees of petitioner, and none of them sustained that relationship again until they were re-employed. Hence there was no longer a majority of petitioner's employees who were members of that union, and the finding to the contrary is not supported by any evidence.

It is urged by the Board that the commission of a crime by strikers does not preclude their right to bargain with petitioner. This we admit, provided they still are employees and represent a majority of all. What we hold is that there was just cause for discharge, it was exercised, and those who have not been re-employed are not employees and were not at the time of the finding and order of the Board. The present employees still have their rights of bargaining without interference of the petitioner, and these may be enforced upon proper procedure. See National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1; National Labor Relations Board v. The Sands Mfg. Co., decided by the Court of Appeals for the Sixth Circuit, May 13, 1938; Standard Lime and Stone Co. v. National

Labor Relations Board, decided by the Court of Appeals fo
Fourth Circuit, June 13, 1938.

The order is set aside.

LINDLEY, District Judge, concurring: The difference betwee
associates apparently grows out of the question of whether the
ployer for good cause terminated the relationship of employer
employee as to the trespassers who seized its property and other
violated the state law. That such seizure did occur is undispu
that the act was "illegal" and "foolish" the respondent admitt
indeed, such characterization of the act is that of counsel for respo
ent. In fact, it has been finally adjudicated by the state courts up
appeal, after full hearing, that certain employees seized the pla
locked and barricaded it from the inside, employed fire extinguishi
chemicals belonging to the employer to repel attempts of law enfor
ment officers to enforce judicial orders, bombarded the officers wi
sulphuric acid and pipes, bolts, nuts, and similar steel and iro
articles. Many other acts of violence by the trespassers ensued, r
sulting in damage to and loss of property seized of the value of man
thousands of dollars. "Illegal and foolish" are mild descriptive term
for the uncontradicted events.

Thereupon, directly and clearly, the petitioner discharged th
wrongdoers solely because of their illegal acts. The evidence justifie
no equivocation as to that conclusion. The discharge was justified
and the employer was not thereafter under any obligation and
sustained no relationship to the discharged men. They were no
longer employees; consequently the Board's order being based errone-
ously (in part) upon a contrary premise, must be vacated. I do
not think the law intends that an employer who has discharged
acknowledged law violators can be compelled to reinstate them and in
case of refusal be said to be, because of such action, a violator himself
of the national law. I find nothing leading me to believe that Con-
gress so intended.

In National Labor Relations Board v. Jones & Laughlin Steel
Corp., 301 U. S. 1, 45–6, the court pointed out that the act does not
interfere with normal exercise of the right of the employer to select
its employees or discharge them, and then continued:

"The employer may not, under cover of that right, intimidate or
coerce its employees with respect to their self-organization and repre-
sentation, and, on the other hand, the Board is not entitled to make
its authority a pretext for interference with the right of discharge
when that right is exercised for other reasons than such intimidation
and coercion."

When we remember that the discharge in the instant case was
grounded solely upon the wilful illegal acts of certain employees,
and not upon membership in the union, a fact that is fortified by the
re-employment of certain of the trespassers who were members of
the union, it is apparent that under the decision of the Supreme
Court the Board may not treat it as unjustified. This conclusion is
supported also by the language of the Supreme Court in Associated

...ers v. National Labor Relations Board, 301 U. S. 103, 132, as follows:

"The act does not compel the petitioner to employ anyone; it does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice. The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees. The restoration of Watson to his former position is in no sense guarantees his continuance in petitioner's employ. The petitioner is at liberty, whenever occasion may arise, to exercise its undoubted right to severe his relationship for any cause that seems to it proper save only as a punishment for, or discouragement of, such activities as the act declares permissible."

See also Standard Lime & Stone Co. v. National Labor Relations Board, C. C. A. 4, June 13, 1938; Appalachian Elec. P. Co. v. Labor Board, 93 Fed. (2d) 985.

Thacker, Circuit Judge, dissenting: My disagreement with the reasoning and result of the majority decision rests upon a difference of opinion as to the respective powers of the National Labor Relations Board and this court in the determination of the legal consequences to be attached to the unlawful acts of striking employees. It is, in short, my understanding of the National Labor Relations Act that when employees have ceased work in connection with a labor dispute or because of an unfair labor practice, the employer-employee relationship continues by force of law; and that although unlawful conduct by striking employees is a fact which must be considered by the Board in determining the scope of its order, such order cannot be set aside by this court unless the making of the order constitutes an abuse of discretion by the Board in view of all pertinent facts, including the fact of misconduct of the employees.

The National Labor Relations Act presupposes the existence of two basic facts: (1) A denial by employers of the right of employees to organize, and a refusal by the employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest; and (2) the necessary effect of the foregoing is to burden or obstruct commerce. It is the policy of the United States, as declared by the Act, to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate these obstructions when they have occurred by encouraging practices and procedure of collective bargaining, and by protecting the exercise by workers of full freedom of association, self organization, and decision of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. The procedural mechanism created by the Act and the powers conferred upon the National Labor Relations Board are carefully chosen to make effective the foregoing policy. The Act declares that certain designated labor practices shall be "unfair labor practices" and empowers the Board to prevent, by

means provided in the Act, any person from engaging in any unfair labor practice affecting commerce.

The Board is without power to attach any punitive consequences to unlawful conduct of employees occurring in connection with labor disputes or strikes. Indeed, the legislative history of the Act discloses that such power was intentionally withheld from the Board; and that it was the congressional intention to leave unlawful conduct of employees of labor unions to be dealt with under the appropriate laws of the states and of the United States.[2] This one-sided feature has been criticized, but the judicial answer was given by the United States Supreme Court in Labor Board v. Jones & Laughlin.[3]

While the Act does not purport to relieve striking employees from the legal consequences of unlawful acts committed in connection with a strike, Section 13 provides that "nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." The only conduct with which the Act purports to deal is the conduct of employers which comes within the legislative definition of unfair labor practices which are made unlawful by the Act itself; and which, apart from statutory regulation, are not unlawful.

But it is urged that the "sit-down" feature of the strike, plus the violence of the strikers when they resisted the efforts of officers to evict them from the petitioner's buildings, gave their employer sufficient cause to sever the employer-employee relationship, and that the employer did sever the relationship by discharging the strikers a few hours after the beginning of the strike. If the employer, in fact and in law, terminated the employer-employee relationship, it necessarily follows that that part of the order of the Board which required reinstatement was erroneous, since it is clear that the Board has power to reinstate only by ordering the employer to put back to work persons whose status, or relationship, of employee is preserved by the National Labor Relations Act. Respondent, National Labor Relations Board, insists that the purported discharge of the strikers

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[2] "Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. * * * In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. * * * The only result from introducing proposals of this sort into the bill in the opinion of the committee, would be to overwhelm the Board in every case with counter-charges and recriminations that would prevent it from doing the task that needs to be done." (Sen. Rep. No. 573, 74th Cong. 1st Sess. (1935), pp. 16, 17. See also H. R. No. 1147, 74th Cong., 1st Sess. (1935), pp. 16, 17.)

[3] 301 U. S. 1, 46.

"The act has been criticised as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible; that it fails to provide a more comprehensive plan—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power. Carrol v. Greenwich Insurance Co., 199 U. S. 401, 411; Keokee Coke Co. v. Taylor, 234 U. S. 224, 227; Miller v. Wilson, 236 U. S. 373, 384; Sproles v. Binford, 286 U. S. 374, 396. The question in such cases is whether the legislature, in what it does prescribe, has gone beyond constitutional limits."

was not in fact a discharge and was not so intended by the employer and not so understood by the striking employees. There is evidence which indicates that the action of the employer was intended merely to strengthen the bargaining position of the employer by weakening the force of the strike. The tenor of the negotiations with individual strikers after the strikers had been evicted from the plant buildings was consistent with the assumption that the employer still considered them to be striking employees. But granting that the petitioner intended to sever the employer-employee relationship, we are confronted with the plain language of the Act which, as a matter of law, continues the employer-employee relationship for purposes of the Act.[4] The reasonable construction is that one who is an employee at the inception of a labor dispute or unfair labor practice, and ceases work because of either, remains an employee as long as the labor dispute is "current" or as long as the unfair labor practice is cognizable by the Board as an obstruction to commerce. The obvious purpose of the Act is to continue the employee relationship as an instrumentality to be used by the Board as the basis of a reinstatement order, or other affirmative action and to avoid any factual controversy, such as in the instant case, respecting the continuance of the relationship.

In the instant case the striking employees were individuals whose work had ceased "in consequence of" and "in connection with" a current labor dispute, and the immediate cause of the cessation was the unfair labor practice of petitioner committed on February 17, 1937. Further, there was no contention that any of the individuals whose work had ceased had obtained "any other regular and substantially equivalent employment." The law of the National Labor Relations Act, applied to the facts of the instant case, required the Board, and requires this court, to recognize that the striking employees continued to have the status of employees for the purposes of the Act. And assuming that the misconduct of the striking employees was a material fact to be considered by the Board in making its decision, still no decision or order of the Board legally could have been predicated upon the assumption that the employer-employee relationship was terminated by the purported discharge of the men at a time when their work already had ceased as a consequence of, and in connection with, both a current labor dispute and an unfair labor practice by their employer.

There is substantial evidence to support a finding that the petitioner engaged in unfair labor practices in the following respects:

(1) Petitioner, prior to February 17, 1937, consistently interfered with, restrained, and coerced its employees in their attempted exercise of rights guaranteed by the Act.

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[4] "Third. The strikers remained employes under Section 2 (3) of the Act which provides: 'The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantial equivalent employment, * * *.' Within this definition the strikers remained employes for the purpose of the Act and were protected against the unfair labor practices denounced by it." National Labor Relations Board v. Mackay Radio & Tel. Co., Supreme Court of the United States, May 16, 1938.

(2) On February 17, 1937, petitioner refused to bargain collect with the Union, which at that time was the legal representative o employees, who as an appropriate unit, were seeking to bargain petitioner through its union as their agent.

(3) Subsequently petitioner refused at different times to bar collectively with the Union as the representative of the striking ployees.

(4) Petitioner "dominated and interfered" with the formation administration of the R. M. W. A., a company union, which organized subsequently to February 17, 1937.

The Board is empowered to prevent any person from engagin any unfair labor practice affecting commerce[5] by issuing an o requiring the employer to cease and desist from any unfair l practice. And on the basis of its findings, the Board clearly empowered to issue the cease and desist order in question unless conduct of the striking employees in some way paralyzed the po of the Board and rendered it impotent to carry out the expres purpose and policy of the Act by taking the specific action which statute empowers it to take. It is, therefore, necessary to consi the materiality of misconduct of employees to the exercise of powers by the Board.

The power of the Board extends only to action to prevent unf labor practices by employers and the Board has no power to cont or punish conduct of employees, either directly by imposing penalti or indirectly by relieving employers of the consequences of unf labor practices. The conduct of employees prior to the commissi of an alleged unfair labor practice is a material fact which the Boa cannot ignore in determining whether the employer has engaged unfair labor practices, but it is not available as a bar to the issuan of a cease and desist order when the evidence supports a finding th the employer has engaged in an unfair labor practice. And in N tional Labor Relations Board v. Carlisle Lumber Company[6] th Ninth Circuit Court of Appeals held that enforcement of the Na tional Labor Relations Board's cease and desist order would not b denied under the clean hands doctrine on the ground that picketin by the members of the Union, with which the employer had refuse to bargain collectively as employees' agent, had resulted in violenc and had violated state laws. The court disposed of the question i the following statement, p. 146:

"Respondent contends that the proceeding before us is an equitable proceeding; that the union's picketing resulted in violence, as the Board found, which was a violation of the laws of Washington, and therefore enforcement should be denied for the reason that the union has not come into the court with clean hands. It is not the union but the Board which is asking enforcement."

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[5] Title 29 U. S. C. A. § 160 (a) "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

[6] 94 Fed. (2d) 138, 146.

the Second Circuit Court of Appeals has held that an employer may not refuse to negotiate with a union because of its past conduct if the union offers in good faith to negotiate as the representative of employees.[1] The following statement from the opinion is pertinent to the facts of this case:

"For this reason, the conduct of a union, like that of an employer, is only during the negotiations when there are any but before there may be relevant in ascertaining whether the proposal to confer is genuine or only part of the tactics of the fight. Nothing else can be material; though the union may have misconducted itself, it has its poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins. In the case at bar there was no warrant whatever for supposing that further negotiations would have been useless."

In the instant case no misconduct of members of the union, either as employees of petitioner or as representatives of the bargaining unit, occurred prior to the unfair labor practices in which the petitioner had engaged prior to and including February 17, 1937, and which culminated in the bald refusal on February 17, 1937, to bargain collectively. Consequently, the misconduct could not affect the validity of the Board's order insofar as it required the petitioner to cease and desist from those unfair labor practices. And if I am correct in believing that the strikers continued to be employees for the purpose of the exercise by the Board of its powers under the Act, the misconduct could not have vitiated the power of the Board to attempt a remedy by a cease and desist order the effects of the unfair labor practices engaged in subsequently to February 17, 1937, since the evidence discloses that the striking employees were continuously willing to enter into good faith negotiations with the petitioner. (National Labor Relations Board v. Remington Rand, Inc., supra; National Labor Relations Board v. Carlisle Lumber Co., supra.)

In respect to the reinstatement provision of the Board's order the petitioner makes the point that the Board is authorized to take only such affirmative action as will effectuate the policies of the Act; and urges that the reinstatement of the individuals who participated in unlawful acts would militate against, rather than effectuate, the policies of the Act. In my opinion petitioner is right in its contention that the authority of the Board in respect to affirmative action is limited to such action as will effectuate the policies of the Act. Consequently, it does not follow that the Board must reinstate all or any employees even though it properly finds that the employer has engaged in unfair labor practices and must, therefore, issue a cease and desist order. This is clear from the language of the pertinent section which definitely fixes the content of the cease and desist order but leaves the content of the order, requiring affirmative action by the employer, in the discretion of the Board, subject only to the qualification that it effectuate the policies of the Act.

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[1] National Labor Relations Board v. Remington Rand, Inc., 94 Fed. (2d) 862, 872–3.

It was held in National Labor Relations Board v. Mackay Rad
Telegraph Co., supra, that the Board properly ordered reinstate
of employees who were refused reinstatement by the employer a
because of their union activities. But the unfair labor practice c
plained of in that case was the alleged discrimination in reinsta
employees. Obviously such order of reinstatement effectuated
policy of preventing that particular type of unfair labor prac
On the other hand the Mackay opinion states that an employer w
has not been engaged in any unfair labor practice has not lost
right to protect and continue his business by supplying places
vacant by strikers; and that the employer is not engaging in
unfair labor practice either when, in order to obtain employees
fill strikers' places, he assures them of permanent employment
when he reinstates only enough to fill vacant places. But the fo
going observations were applied to a case in which the employ
had gone on a strike in connection with a labor dispute and h
abandoned their strike before any unfair labor practice had be
committed by the employer. The only unfair labor practice charg
was the discriminatory refusal to reinstate five men. And the S
preme Court upheld the Board's order requiring the reinstatement
the five men. In the instant case before the strike and during t
pendency of a labor dispute the employer had engaged in unfa
labor practices of the type which, if persisted in, would complete
nullify the policies of the Act. The positive refusal on February 1
1937, to recognize and bargain with the union, which was the lawf
bargaining agent of the employees, precipitated the strike. It is th
position of the Board that the status quo must be restored as of th
time of the unfair labor practice of February 17, 1937, in order t
effectuate the policies of the Act; and that this necessitates the rei
statement of all the members of the appropriate bargaining uni
and the recognition of the union as the bargaining agent for th
unit. The general principle seems sound under the Act and is amply
supported by the reasoning and decisions in National Labor Relations
Board v. Remington Rand, Inc., supra, and Black Diamond S. S
Corporation v. National Labor Relations Board.[8] In the latter case
various groups of employees had ceased work in connection with
labor disputes before any unfair labor practices had occurred. Later
there was a refusal, on December 14, 1937, to bargain collectively with
the lawful agents of appropriate units. The following statements by
the Second Circuit Court of Appeals in its opinion in the Black
Diamond Case are of special significance in determining the validity
of the reinstatement feature of the Board's order in the instant case:

"The act so far as reinstatement is concerned only applies after
there has been an unfair labor practice. As we have said in the
opinion in National Labor Relations Board v. Remington Rand, Inc.,
2 Cir., 94 F. 2d 862, to be filed herewith: 'the powers granted the
Board under section 10 (c), 29 U. S. C. A. § 160 (c), are only

[8] 94 Fed. (2d) 875, 879.

...ial; they are designed to enable it to restore the status quo ...ly as possible, had the wrong not been committed; further it ...not go.'"

* * * * * *

"Under the act men who cease working because of a labor dispute ...cause of an unfair labor practice retain the status of employees. ...long this continues is not made clear. But it is not necessary ...decide the point here. All engineers were employees under the ...who had left work in consequence of labor disputes. But, having ...so before any unfair labor practice, they were relying, and were ...untitled to rely, upon a test of economic strength. They struck ...time when the Board was conducting an election. Since the act ...ssly leaves the right to strike unaffected, any remedies they had ...unaffected by continuing on strike. When on December 14, ..., the Black Diamond refused to bargain with the certified bar...ing agent of its employees, it violated the act and became subject ...such orders of the Board 'as will effectuate the policies of this ...t (chapter).' Section 10 (c), 29 U. S. C. A. § 160 (c).

"From the date of the respondent's first unfair practice, its ordi...ry right to select its employees became vulnerable. Accordingly ...was proper for the Board to order it to discharge all engineers hired ...the first time since December 14, 1936, and to offer reinstatement ...st to those striking engineers whose former positions were open, ...d then to the other striking engineers if, for any reason, any man ...titled to reinstatement refused to accept it. To those men so rein...tated the company must also give back pay. This is the extent of ...e order.

* * * They say that in the Supreme Court's recent decisions ...taining the Wagner Act, 29 U. S. C. A. §§ 151–166, the persons ...instated had been discharged because of union membership or activ...ies, whereas here the severance of relations was voluntary. But ...der section 2 (3) of the act, 29 U. S. C. A. § 152 (3), the striking ...gineers still remained employees, and to 'effectuate the policies of ...is act (chapter),' section 10 (c), 29 U. S. C. A. § 160 (c), no more ...s done than to maintain the status quo which existed on December ..., 1936, as against unfair labor practices which occurred thereafter. ...e facts bring the case within the rule established in National Labor ...lations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, and ...her Supreme Court decisions."

On the authority of the decisions of the Supreme Court of the ...ited States in which the National Labor Relations Act has been ...nstrued and applied, and more particularly on the authority of the ...preme Court decision in the Mackay case, supra, and the decisions ...the Second Circuit Court of Appeals in the Remington Rand and ...ack Diamond cases, supra, and the Ninth Circuit Court of Appeals ...the Carlisle case, supra, I am of the opinion that the order of the ...oard in the instant case is in general valid.

I believe, however, that petitioner's contention that the reinstatement feature is too broad, even under the decision in the Black Diamond case, is well taken, unless the present reinstatement provision can be construed to limit the requirement of reinstatement to those for whom jobs would be available upon dismissal of all new employees who were hired after the refusal to bargain on February 17, 1937. Although management policies and practices which affect the positions of employees may be the basis of legitimate labor disputes in respect to which employees may assert their right to collective bargaining under the Labor Relations Act, yet there is no provision in the Act which purports to qualify the right of an employer to abolish unnecessary jobs either during the pendency of a labor dispute or after the commission of an unfair labor practice by an employer. In short, the National Labor Relations Act continues the employer-employee relationship for the purpose of enabling the Board to effectively prevent unfair labor practices, but does not protect striking employees from disadvantages which result from normal management action taken by the employer during the time the striking employees voluntarily refuse to work.

As indicated above, I believe that it is the duty of the Board, in determining the scope of a reinstatement order, to take into consideration unlawful conduct of striking employees when such conduct will militate against the effectuation of the policies of the Act in case of restoration of striking employees to their work. It is not within the lawful authority of the Board to order reinstatement, or refuse to order it, as a punitive measure either against employees for unlawful acts or against employers for engaging in unfair labor practices. Obviously, the threat of continued unlawful acts by striking employees should not be considered a factor favoring reinstatement; on the other hand neither should the possibility of friction between employer and reinstated employees resulting from the employer's resentment of reinstatement as a means of effectuating the policies of the Act be considered a factor favoring refusal of reinstatement. It seems that the dominating consideration should be the probable effect upon the future relations between the employer and the employees in respect to the problem of avoiding or peaceably settling industrial disputes. If, in the instant case, employees had continued their unlawful acts in disregard of the rights of petitioner, and if there had been reasonable ground for the Board to conclude that because of the continuing effect of employees' misconduct, a general reinstatement would demoralize the operation of petitioner's business and would encourage rather than discourage interruptions of production with consequent interference with commerce, then the Board should have denied a general reinstatement. This should have been done, however, not under the unrelated equity doctrine of clean hands, but because a general reinstatement reasonably could not contribute to the effectuation of the policies of the Act.

In view of the evidence which was before the Board, I do not believe that this court can hold that the Board acted arbitrarily in concluding

the return of the striking employees under a general reinstatement order would contribute substantially to the effectuation of the policies of the National Labor Relations Act.

After the eviction of the striking employees from the plant building there were no unlawful acts committed by the employees and no unlawful efforts to interfere with the operation of the plant. The request for union recognition and collective bargaining was repeated and was refused. Petitioner's superintendent had authority to restaff the plant with new employees in addition to such of the old employees as he should see fit to reinstate. Thirty-five of the sit-down strikers were reinstated and many of them testified at the hearing that they had been active in resisting the officers who were seeking to evict them from the petitioner's buildings. Four strikers who testified at the hearing that they had engaged in violence, and detailed acts of violence committed by themselves, were returned to work; and these men, along with other sit-down strikers who were working for petitioner at the time of the hearing, were paid full wages for the time which was lost by reason of the sit-down strike. One striking employee testified that in a conversation with petitioner's superintendent he was told that he would be called when he was needed; that the superintendent made no objections to his return to employment because of his participation in the sit-down strike. He also testified that the superintendent shook hands with him and said "all is forgiven." There is testimony which indicates that other sit-down strikers could have returned to their jobs if they had been willing to return without union recognition and general reinstatement of the strikers.

In view of the foregoing and other evidence which is in the record it was not unreasonable for the Board to conclude that a general reinstatement of the striking employees would not result in friction between employer and employees merely because of the presence and activities of the reinstated employees. And, assuming full recognition by the petitioner of the policy of collective bargaining as provided for in the Act, the Board was justified in concluding that future peaceable settlement of labor disputes would be facilitated rather than obstructed.

It is urged that an affirmance of the order of the Board is an approval of the unlawful acts of the employees. I understand the emotional appeal involved in that contention, but cannot comprehend its relation to a judicial consideration of the question before us. It is as meaningless as would be the contention that a reversal of the order of the Board constitutes an approval of the unlawful defiance of the National Labor Relations Act by the petitioner. Granting that the employees were wrong in assuming that they could rightfully strengthen the force of their strike by remaining in possession of the building in which they worked, it is obvious that they did not make a greater mistake as to the law than did the petitioner and its advisers who believed that the petitioner could rightfully refuse to bargain collectively with the agent of the employees on the ground

that the National Labor Relations Act was unconstitutional. striking employees paid the penalty for their resistance of the cers of the law who were acting under order of the state court least all did against whom proceedings were not dropped. National Labor Relations Board had no jurisdiction over that q tion. It does have jurisdiction over the case presented by the un labor practices of the petitioner; and the question for decision by court is whether the order of the Board made in the performance its duties under the National Labor Relations Act was within statutory power to make on the basis of the findings which w supported by substantial evidence. With the exception above no I think it was.

A true copy.
Teste.

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the twenty-second day of Jul 1938, the following further proceedings were had and entered record, to-wit:

Friday, July 22, 1938

Court met pursuant to adjournment

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. WALTER E TREANOR, Circuit Judge; Hon. WALTER C. LINDLEY, District Judge.

6606

FANSTEEL METALLURGICAL CORPORATION
vs.
NATIONAL LABOR RELATIONS BOARD

Petition for Review of Order of the National Labor Relations Board

This cause came on to be heard on the petition of Fansteel Metallurgical Corporation for review of the order of the National Labor Relations Board in this cause, and on the answer thereto, the transcript of record of proceedings before the said Board, and the briefs of counsel, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this Court that the Order of the National Labor Relations Board, entered on March 14, 1938, be, and the same is hereby set aside.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the fore-

ng typewritten pages, numbered from 1 to 31, inclusive, contain true copy of the Order taking cause under advisement, entered May 1938, Opinion filed July 22, 1938, Judgment entered July 22, 1938, the following entitled cause: Fansteel Metallurgical Corporation, titioner, vs. National Labor Relations Board, Respondent, No. October Term, 1937, as the same remains upon the files and ords of the United States Circuit Court of Appeals for the Sev- h Circuit.

In testimony whereof, I hereunto subscribe my name and affix the l of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of September, A. D. 38.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1938

Supreme Court of the United States

Order allowing certiorari

Filed November 21 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 274.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1939

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FANSTEEL METALLURGICAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered on July 22, 1938 (R. 2000), setting aside an order of the National Labor Relations Board against Fansteel Metallurgical Corporation.

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1947–1971) are reported in 5 N. L. R. B. 930. The opinion of the Circuit Court of Appeals, the concurring opinion, and the dissenting opinion (R. 1980–2000) are reported in 98 F. (2d) 375.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 22, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether a Circuit Court of Appeals, having determined that the evidence supports the findings of the Board that an employer has engaged in unfair labor practices within the meaning of subsections (1) and (2) of Section 8 of the Act, may nevertheless properly set aside so much of the order of the Board as requires the employer to cease and desist from such unfair labor practices, and to withdraw recognition from the labor organization illegally dominated and supported.

2. Whether there was evidence to support the Board's finding that an announcement made by respondent to certain of its employees purporting to discharge them was not intended to effectuate, and in fact was not, a discharge of these employees.

3. Whether striking employees whose work has ceased because of unfair labor practices and as a consequence of and in connection with a current labor dispute lose their status as employees within the meaning of Section 2 (3) of the Act upon their discharge, assuming that they were in fact discharged.

4. Whether there was evidence to support the findings of the Board that respondent had refused to bargain collectively with the representative of its employees and thereby engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act.

5. Whether the Board has power under Section 10 (c) of the Act, and properly exercised the power in this case, to order an employer to offer reinstatement upon request to any or all of the following groups of employees who have gone on strike because of unfair labor practices committed by the employer:

a. Employees who, during the course of the strike, engaged in a "sit-down" in the employer's premises.

b. Employees who resisted eviction and arrest by state police officers in connection with a state injunction proceeding relating to the strike.

c. Employees who during the course of the strike did not themselves engage in the "sit-down" but brought food and clothing to those who did.

d. Any of the above-described employees who, after the conclusion of the "sit-down", were adjudged in contempt of court in an injunction proceeding in a state court.

6. Whether, if the Board lacked such power or if its exercise was, under the circumstances, an abuse of discretion, the court below properly set aside the order of the Board to the extent that it ordered reinstatement of employees whose only

participation in the strike was their voluntary cessation of work.

7. Whether, in ordering such reinstatement, the Board properly took account of a partial reorganization of operations and positions in respondent's plant made subsequent to the strike in directing that, after such reinstatement, but without disturbing the reorganization made, respondent could reduce or rearrange its staff as then constituted upon any nondiscriminatory basis, subject, however, to dismissing all persons hired for the first time after the strike.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 32–34.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that the finding of the Board that respondent on February 17, March 3, and March 5, 1937, refused to bargain collectively with the duly designated representative of its employees, thereby engaging in unfair labor practices under Section 8 (5) of the Act, is not supported by evidence.

2. In holding that the finding of the Board that respondent's purported discharge of certain employees on February 17, 1937, was not in fact a discharge is not supported by evidence.

3. In holding that the purported discharge deprived the Board of power to reinstate the strikers.

4. In not holding that all persons who went on strike on February 17, 1937, because of respondent's unfair labor practices, continued at all times thereafter to be employees within the meaning and for the purposes of the Act.

5. In not holding that, despite any acts of violence, the "sit-down," and the violation of the state court injunction, the Board had the power, and under the circumstances of this case properly exercised its discretion, to order respondent to reinstate all employees who went on strike on February 17, 1937, because of respondent's unfair labor practices.

6. In not holding that the Board could properly require respondent, in reinstating the striking employees, to distribute all available positions among such employees and the other employees hired before February 17, 1937, who resumed work, in a nondiscriminatory fashion.

7. In denying enforcement to those portions of the cease and desist provisions of the Board's order which were based upon findings, concededly supported by evidence, of violation of Sections 8 (1) and (2) of the Act.

8. In setting aside the Board's order, and in not granting full enforcement thereof.

STATEMENT

Pursuant to Section 10 (b) of the National Labor Relations Act, the National Labor Relations Board on May 25, 1937, issued a complaint against respondent, a copy of which, together with

notice of hearing, was duly served upon respondent (R. 24–32). The complaint alleged, in substance, that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7) of the Act. (R. 31). Respondent answered on June 2, 1937 (R. 69–79). A hearing was held from June 7 to June 25, 1937, before a Trial Examiner of the Board (R. 95–1561). On September 2, 1937, the Trial Examiner filed an Intermediate Report (R. 1863–1905), containing his findings and recommendations, to which exceptions were filed by respondent and by the Amalgamated Association of Iron, Steel, and Tin Workers of America, Lodge 66 (hereinafter referred to as the Union) (R. 1907–1938, 1941–1944). On March 14, 1938, the Board issued its findings of fact, conclusions of law, and order (R. 1944–1971). The facts as found by the Board and as shown in the evidence may be summarized as follows:[1]

Respondent, a New York corporation, is engaged at North Chicago, Illinois, in the manufacture and sale of various products made from rare metals and is extensively engaged in commerce among the States and with foreign nations (R. 1947). Until early in July 1936 no labor organization of any kind existed at respondent's plant (R. 1947; 165).

[1] In the following statement of the facts the first reference will be to the findings of the Board. Succeeding references, preceded by a semicolon, are to the supporting testimony.

At that time a group of respondent's employees organized a labor organization, the Union (R. 1947–1948; 202, 220–224, 245). Shortly thereafter respondent hired from the National Metal Trades Association, in which it had applied for membership, a labor spy who joined the Union, furnished respondent written reports of union activities, assumed the role of the "radical" in the Union, and urged the men to use militant tactics and to strike (R. 1952–1955; 339–341, 344, 359, 366, 372, 373–381, 387–395).

A substantial number of respondent's employees joined the Union prior to September 10, 1936, and the Union at that time believed it had been designated by a majority of the employees as their representative (R. 1956; 137–188, 291). On September 10 the bargaining committee of the Union called on respondent's superintendent to present a proposed collective bargaining contract and negotiate for its acceptance. Respondent first required, as a condition of the meeting of September 10, that the Union committee be composed only of employees who had worked for respondent for more than 5 years (R. 1948; 205, 252). The Union met this condition, but nevertheless respondent, without questioning whether the Union had been designated by a majority of the employees, and admitting that the terms of employment proposed in the tentative contract were fair and could be met, refused to bargain with the Union committee upon the ground

that it would not deal with any "outside" union (R. 1948–1949; 204–205, 209, 217, 252–253, 282–283, 285, 316).

In accord with respondent's suggestion at the September 10 meeting that the men should consider an "inside" union (R. 1948; 218, 253, 255, 284, 290–291, 316, 433–434, 867), respondent's superintendent and foremen shortly thereafter requested employees to "quit" the Union and circulated a petition for the formation of an "inside" union, which, with admonitions and threats, the employees were urged to sign (R. 1950–1951; 413, 423–426, 430–437, 867, 869, 871–876, 880, 884–893, 896–897, 1350–1352, 1357–1359). The attempt to establish an "inside" union at that time failed, and the campaign was dropped (R. 1951; 1350–1352).

On September 21, when the committee again called upon respondent, an organizer of the Union who was not an employee of respondent was acting as a member. After angrily insisting on the withdrawal of the "outside" organizer, who thereupon withdrew, respondent's superintendent denied that any appointment had been made with the committee, and it left (R. 1949–1950; 230–231, 237, 255–256, 285–286, 317–318).

From November 1936 to February 1937 respondent required the president of the Union to work in a room adjoining the office of the superintendent, and forbade him to go to the plant or associate with other employees (R. 1951–1952; 274, 389, 438–443).

By February 17, 1937, 155 of respondent's 229 production and maintenance employees had joined the Union and designated it as their collective bargaining representative (R. 1955–1957; 188, 1004–1006, 1338–1343, 1636–1659, 1859). On that date, the Union committee met twice with respondent's superintendent. At each meeting the superintendent bluntly rejected the Union's request for collective bargaining upon the ground that respondent would not deal with an "outside" union (R. 1957; 257–258, 270–271, 288–289).

Shortly after the second meeting, which took place early in the afternoon, and because of respondent's refusal to bargain collectively, the Union began a strike which was accompanied by a "sit-down" in two of the key buildings of the plant (R. 1958, 1966; 258, 271–277, 298–300, 328–332, 405–409). Of the employees named in the complaint, 28, mostly women and those working on the night shift, did not participate in the "sit-down" (R. 1958; 81–82, 299–300, 463–465, 469, 660–661, 662, 666–669, 674–677, 697–700, 704–705, 708–709, 720–727, 737–738, 743–744, 748, 762, 772, 779–783, 786, 794–796, 802–803, 806–807, 824, 852–853, 900–903, 1036–1038, 1047, 1056–1057, 1785). A few hours after the strike began, respondent's superintendent went to each of the buildings and demanded that the men leave. Upon their refusal, respondent's attorney shouted that all employees in the buildings were discharged (R. 1958; 1961, 277–278, 302, 333, 1780–1781). On February 18, 1937, re-

spondent secured an injunction from the Circuit Court of Lake County, Illinois, which required the men to vacate the buildings (R. 1958; 1147, 1171–1172, 1781). The workers refused to leave, and on February 19, 1937, successfully resisted an attempt by the sheriff and his deputies to evict and arrest them (R. 1958–1959; 1089–1105, 1113–1123, 1131–1145, 1782, 1833, 1835). Continuously throughout the strike, respondent refused to meet a Union committee or negotiate with it, although requested so to do by the United States Department of Labor, the Governor of Illinois, the Mayor of Waukegan, and others (R. 1959; 1503, 1506–1510, 471–476, 491–503). On February 26 the sheriff and his deputies evicted the workers who then remained in the plant (R. 1959; 585, 949, 1117, 1143, 1174, 1179, 1183).

The strike continued after the ejection of the strikers from the buildings (R. 1960; 335, 721, 748, 902). On March 3 and 5, 1937, written requests were presented to respondent for collective bargaining meetings. Each time, in a written reply, respondent refused the Union's request (R. 1960; 336, 474–476, 508–509, 1668–1673).

Early in March respondent reopened its plant and returned to work all employees who were willing to return, including 37 employees who had participated in the "sit-down" part of the strike and had resisted eviction in violation of the injunction (R. 1959–1961; 1215–1216, 1254–1255, 1299, 1784, 1910). To the employes returning to work respondent paid their regular wages for the time the

plant had been closed (R. 1960; 1136, 1138, 1145, 1152, 1175, 926, 992, 1331–1332). Many of those named in the complaint, including a number of the "sit-down" strikers, were individually solicited to return to work by respondent, but refused respondent's offers because it would not recognize the Union (R. 1960–1962).[2] As a consequence, these as well as the rest of the 92 persons named in the complaint were still out on strike at the time of the hearing (R. 1960; 574, 526, 595, 643, 746, 757, 729, 578, 768, 816, 825, 560, 592, 590, 633).

At the time of the reopening, respondent reorganized its plant by abolishing certain departments and substituting women for men in others (R. 1967–1968). New employees were hired to fill the positions of those remaining on strike (R. 1959).

Shortly after the reopening of the plant a labor organization known as Rare Metal Workers of America was organized among respondent's employees (R. 1962–1963; 917–921, 927). It was instigated and supported by respondent and accorded immediate recognition as the exclusive collective bargaining agent of respondent's employees (R.

[2] The pleadings and evidence show that 22 were so solicited, including 15 "sit-down" strikers (R. 76, 81–82, 446–447, 449, 452–453, 458, 460, 563, 569–574, 579–580, 586–587, 618, 731, 734–735, 907, 1910). The amended answer to the Board's complaint (R. 76, 82) and the undisputed evidence show that 8 of the strikers named in the complaint who had refused respondent's individual solicitation of their return to work thereafter received sentences from the court (R. 334, 449, 562, 563, 569–570, 586, 1241–1242, 1741–1759). Sentences were also imposed on 28 others.

1962–1965; 918–920, 927–945, 962–979, 984, 989, 999–1005, 1008–1011, 1125–1126, 1323).

In June, a substantial number of the sit-down strikers were fined and given substantial jail sentences by the Circuit Court of Lake County for violating the injunction (R. 1959).

Upon the basis of these findings, the Board concluded that respondent, by engaging in espionage upon the Union, by isolating the Union president, by urging employees to abandon the Union, and by other acts, had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act (R. 1951–1955); that respondent had dominated and interfered with the formation and administration of, and had contributed support to, the Rare Metal Workers of America, thereby engaging in unfair labor practices within the meaning of Section 8 (2) of the Act (R. 1962–1965); that on February 17, 1937, and all times thereafter, the Union, having been designated by a majority of respondent's production and maintenance employees as their bargaining agent, constituted the duly designated collective bargaining representative of all employees within an appropriate unit (R. 1955–1957); and that respondent's refusals to bargain with the Union on February 17, March 3, and March 5, 1937, were unfair labor practices within the meaning of Section 8 (5) of the Act (R. 1957–1958, 1962, 1969). The Board further found that the strike on February 17, 1937, was the result of respondent's unfair labor practices occurring on or before that

date, that respondent's announcement of a discharge of those within the plant was not intended to and did not in fact constitute a discharge, and that all the strikers at all times remained employees of respondent (R. 1958, 1960–1961, 1966). Contrary to the finding of the Trial Examiner, the Board concluded that respondent had not engaged in unfair labor practices in violation of Section 8 (3) since the strikers had not actually been discharged and had not applied for reinstatement (R. 1960–1962).

The order of the Board (R. 1970–1971) requires respondent to cease and desist from the unfair labor practices found. As affirmative action which the Board found would effectuate the policies of the Act, respondent is required to bargain collectively with the Union; to withdraw recognition from and disestablish the Rare Metal Workers of America as representative of its employees for collective bargaining; upon their application, to offer immediate and full reinstatement to those employees who went on strike on February 17, 1937, dismissing, if necessary, all persons hired since that date; to make whole all strikers for losses they may suffer by reason of any refusal of their applications for reinstatement in accordance with the order; and to post appropriate notices.

In its decision the Board fully considered respondent's objection that the strikers should not be reinstated because of their participation in the "sit-down" aspect of the strike and related conduct, but

overruled the objection upon the ground that respondent, by defiance of the Act, had caused the strike, and therefore it should not be permitted to assert that the strikers' conduct, engaged in during and as part of the strike, barred their reinstatement (R. 1966–1967). The Board further found that respondent's objection was insincere, in view of the fact that respondent had voluntarily sought out and taken back a large number of the "sit-down" strikers (R. 1967).[3]

On March 24, 1938, respondent, pursuant to Section 10 (f) of the Act, filed in the court below a petition to set aside the Board's order (R. 1–17). The Board answered, requesting full enforcement of its order (R. 18–22). On July 22, 1938, the court, Judge Treanor dissenting, set aside the entire order (R. 1980–2000).

Three opinions were handed down. Both the opinion-in-chief and the dissenting opinion specifically state that the evidence adequately supported the Board's findings that respondent had engaged in espionage and had interfered with and supported Rare Metal Workers of America, thereby committing unfair labor practices within the meaning of Section 8 (1) and (2) of the Act (R. 1987,

[3] The Board took account of the fact that a reorganization of respondent's operations after the strike might make it impossible for respondent to retain all of the reinstated strikers, and accordingly directed that, after the reinstatement necessary to remedy the unfair labor practices, respondent was free to reduce its entire staff as then constituted on any nondiscriminatory basis (R. 1967–1968).

1993–1994). The concurring opinion apparently agrees (R. 1990–1991).

The majority, however, held that the findings that respondent had refused to bargain collectively were not so supported. This conclusion the majority predicated upon their further determination, contrary to the finding of the Board, that the strikers were in fact discharged and for good cause on the evening of February 17, that thereupon they ceased to be employees of respondent, and hence the Union no longer represented a majority (R. 1987). These reasons have no application, of course, to the refusal to bargain on the afternoon of February 17, which is not mentioned.[4] The opinions also reveal a further misconception of the facts and their time sequence. They recite, as grounds for the discharge, many acts of violence, damage to property, and disobedience of the injunction (R. 1987–1988, 1990), although admittedly none of these acts occurred until after the discharge had been announced and could have constituted no basis therefor. The conclusion of the majority was that the whole order, including the provisions based upon the findings of Section 8

[4] The majority did not deal at all with the specific question whether the "discharge" could have any legal effect in view of the provisions of Section 2 (3) protecting the status of the strikers as employees for purposes of the Act. Yet a holding that Section 2 (3) did not apply was a prerequisite to concluding that respondent's refusals to negotiate on March 3 and 5, after the dischharge announcement, were not violations of Section 8 (5).

(1) and (2) violations sustained by the court, should be set aside (R. 2000).

Circuit Judge Treanor, dissenting, held that all of the Board's findings of fact as to the unfair labor practices were supported by the evidence; that even if respondent had intended to discharge the strikers on February 17 they nevertheless thereafter remained employees for purposes of the Act by virtue of Section 2 (3); that the cease and desist provisions of the order were mandatory under the Act as to all unfair labor practices found; and that the affirmative provisions of the order were properly within the power and discretion of the Board and should be enforced in full except as to a minor provision pertaining to the manner of reinstatement in the event there were not sufficient jobs for all employees (R. 1951-2000).

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW PRESENTS A QUESTION SIMILAR TO THAT PRESENTED IN NATIONAL LABOR RELATIONS BOARD v. COLUMBIAN ENAMELING & STAMPING CO., INC., WHICH IS OF VITAL IMPORTANCE IN THE PROPER ADMINISTRATION OF THE ACT

In its decision in the instant case the Circuit Court of Appeals for the Seventh Circuit has again applied, in an even more accentuated form, the doctrine that it originally enunciated in its decision in *National Labor Relations Board* v. *Columbian Enameling & Stamping Co., Inc.*, No. 229, in which certiorari was granted on October 10, 1938.

In the *Columbian* case the court below held that by striking in violation of their contract the employees terminated their employment relationship and thereby ceased to be persons toward whom the employer must observe the duties prescribed by Section 8 (5) of the Act. In the instant case the court has held that employees who struck as a result of unfair labor practices and engaged in violent conduct ceased to be persons with whose representative the employer was required to bargain collectively. Thus, in both cases, the court failed to give effect to the provisions of Section 2 (3) of the Act, which provide that any person who has ceased work as a consequence of and in connection with a current labor dispute or because of unfair labor practices shall remain an employee for the purposes of the Act. The court below read into the section in each case an exception which excludes from the status of employees strikers who have engaged in misconduct. The holding is not only contrary to the express intent of Congress [5] but is also of great importance in the administration of the Act.

The *Columbian* case is not cited by the court below, but there can be no doubt that the doctrine

[5] During the hearings before the Senate Committee on Education and Labor it was urged that the definition of employee should be amended to exclude strikers guilty of violence (Hearings before the Committee on Education and Labor, United States Senate, 74th Congress, 1st Sess., on S. 1958, Pt. 3, pp. 297, 302, 603). The fact that Congress had this suggestion before it and failed to adopt it em-

there enunciated was at the basis of the court's holding. Indeed, Judge Treanor, dissenting, states (R. 1991):

> My disagreement with the reasoning and result of the majority decision rests upon a difference of opinion as to the respective powers of the National Labor Relations Board and this court in the determination of the legal consequences to be attached to the unlawful acts of striking employees. It is, in short, my understanding of the National Labor Relations Act that when employees have ceased work in connection with a labor dispute or because of an unfair labor practice, the employer-employee relationship continues by force of law and that although unlawful conduct by striking employees is a fact which must be considered by the Board in determining the scope of its order, such order cannot be set aside by this court unless the making of the order constitutes an abuse of discretion by the Board in view of all pertinent facts, including the fact of misconduct of the employees.

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phasizes that Congress did not intend such persons to be excluded from the employee category established in the Act. Even more conclusive are the statements in the Senate and House Committee reports on the Act to Congress: that the law was limited to employer conduct and was not intended to deal with employee violence; that existing law both state and federal adequately provided sanctions for employee misconduct; and that it was not desired to burden the Board with the laborious sifting of counter recriminations involved in determining issues relating to employee violence (Sen. Rep. No. 573, 74th Cong., 1st Sess. (1935), pp. 16–17; H. R. No. 1147, 74th Cong., 1st Sess. (1935), pp. 16–17).

Judge Treanor also dissented upon similar grounds in the *Columbian* case.[6]

In the instant case the court below has, however, gone far beyond its decision in the *Columbian* case. Here, although holding specifically that the evidence sufficiently supported the Board's findings of unfair labor practices arising from espionage and the creation of a company union, the court has refused to enforce the corresponding cease and desist and disestablishment portions of the order of the Board. The court holds, in other words, that misconduct by the employees bars the Board from remedying unfair labor practices occuring prior to the strike and which were the direct cause of it, and unfair labor practices committed subsequent to the misconduct but completely unrelated to it. No reason is given in the majority opinions for the refusal to enforce these portions of the order, but the clear inference is that the court was applying

[6] That the effect of unlawful acts of the strikers was actually the basis of the majority decision also appears from the fact that the holding that the discharge was effective is expressly rested by Judge Sparks on the ground that "we are compelled to so hold in order to avoid placing our approval upon such activities as they (the strikers) engaged in." (R. 1988.) Judge Lindley said, "I do not think the law intends that an employer who has discharged acknowledged law violators can be compelled to reinstate them and in case of refusal be said to be, because of such action, a violator himself of the national law. I find nothing leading me to believe Congress so intended" (R. 1990). Further, if the discharge was actually the basis of the decision, the court should have approved the reinstatement of the 28 persons named in the complaint who were never discharged (see p. 9, *supra*, 30, *infra*), which it did not do.

to the present case the doctrine, stated in its decision in the *Columbian* case, that a proceeding for the enforcement of an order of the Board is in effect a private proceeding between employees and the employer in which questions concerning the misconduct of the employees are decisive of the power of the Board.

The decision, we believe, thus presents a question of law even more important than that involved in the *Columbian* case, which has not been but should be settled by this Court. It is a question which recurs in cases arising under the Act. In many of the cases decided by the Board the employer has urged violence or other misconduct as a defense to charges of unfair labor practices.[7] Many of those cases have reached the Circuit Courts of Appeals.[8]

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[7] See, for example, *Matter of Alaska Juneau Gold Mining Co.*, 2 N. L. R. B. 125; *Matter of C. A. Lund Co.*, 6 N. L. R. B., No. 65; *Matter of Biles-Coleman Lumber Co.*, 4 N. L. R. B. 679; *Matter of U. S. Stamping Co.*, 5 N. L. R. B., No. 29; *Matter of Douglas Aircraft Co., Inc.*, 6 N. L. R. B., No. 108; *Matter of Consumers Research, Inc.*, 2 N. L. R. B. 57; *Matter of Rabhor Co., Inc.*, 1 N. L. R. B. 470; *Matter of United Aircraft Mfg Corp.*, 1 N. L. R. B. 236; *Matter of Elkland Leather Co., Inc.*, 8 N. L. R. B., No. 56; *Matter of Electric Boat Company*, 7 N. L. R. B., No. 77; *Matter of Stackpole Carbon Co.*, 6 N. L. R. B., No. 36.

[8] *National Labor Relations Board* v. *The Kentucky Fire Brick Co.* (C. C. A. 6th, decided June 29, 1938); *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531 (C. C. A. 4th); *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, No. 970, May 23, 1938; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, certiorari denied, No. 907, May 23, 1938.

Moreover, the question is of basic importance in the proper administration of the National Labor Relations Act. If employee misconduct terminates their status as employees under the Act, exempts employers from their duties imposed by the Act to refrain from interfering with, restraining, or coercing their employees and to bargain collectively with their representatives, and prevents the Board from issuing remedial orders to correct unfair labor practices, a large field in which the Board's activities are of the most vital importance are put beyond the powers intended to be conferred upon the Board by Congress.

We submit, therefore, that, not only because the question presented in the instant case is similar to that presented in the *Columbian* case, but also because the decision below presents a serious obstacle to the proper enforcement of the Act, a review of this case is warranted.

II

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH DECISIONS OF THE CIRCUIT COURTS OF APPEALS FOR THE SECOND AND NINTH CIRCUITS

In both *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938, and *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, May 23, 1938, the courts considered the effects of acts of violence by employees

upon the power of the Board to remedy unfair labor practices. In the *Remington Rand* case, the Board found that the company had refused to bargain collectively in violation of Section 8 (5) of the Act. The company's contention, that the order of the Board should not be enforced because the union had called a strike in violation of a contract and had been guilty of violence and illegal conduct during the strike, was flatly rejected by the Circuit Court of Appeals. See 94 F. (2d) 872–873. In the *Carlisle* case the court also refused to deny enforcement to an order of the Board on the ground that picketing by employees had resulted in violence and had violated state laws. The decision below is in conflict with each of these decisions.

The decision below also conflicts with the *Carlisle* case in its holding that irrespective of Section 2 (3) of the Act, the purported discharge of the strikers on February 17, 1937, effectively terminated their employee status.

Section 2 (3) of the Act provides in part that, as used therein:

> The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice * * *.

The employees who went on strike in this case satisfy this definition in every detail.

The opinion-in-chief and the concurring opinion do not deal with Section 2 (3), although its relation

to the discharge was fully argued to the court by both parties. Hence, it must be assumed that the court regarded as of no significance the circumstance that the cessation of work was caused by respondent's unfair labor practices. Such a strike, moreover, is clearly a "labor dispute" within the meaning of Section 2 (3), since it is a "controversy concerning * * * the associaton or representation of persons in negotiating * * * or seeking to arrange terms or conditions of employment" (Section 2 (9)).

In the *Carlisle* case, the court, under similar circumstances, sustained the contention of the Board. There the employer, during a strike, and prior to the effective date of the Act, formally notified its employees that they had been discharged and that the payrolls had been closed. Notwithstanding that fact, the court held that the employer had violated Section 8 (5) of the Act in refusing to bargain with the strikers after the Act became effective, and sustained an order of the Board requiring reinstatement of all the strikers. Cf. *Jeffrey-De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938; *Black Diamond S. S. Corp.* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, No. 872, May 23, 1938; *National Labor Relations Board* v. *Biles-*

Coleman Lumber Co., 98 F. (2d) 16, 18 (C. C. A. 9th).

The *Carlisle* decision and that of the court below cannot be distinguished by the fact that the discharge in the instant case was found by the court below to be for good cause. If the justifications for the discharge were the test of the application of Section 2 (3), the fact that the discharges involved in the *Carlisle* case preceded the effective date of the Act, and consequently were for "good cause" no matter what inspired them, effectively answers the attempted distinction.

III

THE COURT BELOW HAS DECIDED SEVERAL IMPORTANT QUESTIONS DIRECTLY CONTRARY TO THE PLAIN LANGUAGE OF THE NATIONAL LABOR RELATIONS ACT

1. As we have already pointed out, *supra*, pp. 19–21, the court below denied enforcement to the portions of the order of the Board requiring respondent to cease and desist from its violations of Section 8 (1) and (2) of the Act and to disestablish the labor organization interfered with and supported in violation of Section 8 (2), in spite of the fact that it held that the findings of the Board that respondent had engaged in espionage and had fostered a company-dominated union were supported by the evidence. Such a holding is not supported by any reasons in the opinion below and is, we submit, contrary to the plain terms of the statute. The

language of the Act is both mandatory and unqualified in directing the Board when it finds that an employer has engaged in or is engaging in unfair labor practices to issue an order requiring the employer to cease and desist therefrom. Section 10 (c). The language of the Act likewise directs the Board to require the employer to take such affirmative action as will remedy the situation brought about by the unfair labor practices, although the Board may exercise its discretion in determining what affirmative action will best effectuate the policies of the Act. The purposes of Congress require that this language be accorded its plain meaning and that an employer who has been guilty of espionage or instrumental in the creation of a company union be subject to a corrective order of the Board. If the policy of the Act is to be effectuated, there can be no reason why espionage or the creation of company-dominated unions should go unremedied.

In addition, the unfair labor practice of respondent in dominating, interfering with, and supporting a labor organization contrary to Section 8 (2) of the Act occurred subsequent to and is a matter entirely apart from the strike. The refusal of the court to enforce the provisions of the order relating to this company dominated union allows respondent now and in the future to treat with a labor organization subservient to its will as the representative of its employees and prevents the employees

from bargaining through their own freely chosen representative. Plainly, under previous decisions of this Court, the order requiring disestablishment should have been sustained. *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272.

2. The court below held that the finding by the Board that respondent had refused to bargain collectively with the Union in violation of Section 8 (5) of the Act was not supported by evidence. The holding is directly contrary to the undisputed evidence. In reaching its conclusion, the court did not question the findings that on February 17, 1937, the Union represented a majority of the production and maintenance employees, that those employees constituted an appropriate unit for collective bargaining purposes, and that twice on February 17, before the strike, respondent refused to treat with the Union committee on the ground that it would not deal with an outside organization (R. 1955–1958). Indeed, respondent's petition for review in the lower court did not question these findings (R. 11). The sole basis for the court's conclusion was that *after* the strike began respondent "discharged" the strikers, so that they were "no longer employes" (R. 1987–1988). Whether or not the "discharge" had any effect upon respondent's obligations thereafter, it certainly cannot have affected its prior refusals to bargain.

The foundation for the court's holding is, therefore, completely erroneous.[9]

3. The court did equal injustice to the facts, we submit, in holding that the evidence did not support the finding of the Board that the discharge was not in fact intended to terminate the employer-employee relationship. Respondent admitted at the hearing that it had never compiled a list of all those whom it claimed to have discharged (R. 1340–1341). Of the striking employees, 22 had been in respondent's employ from 15 to 25 years, 23 of them from 7 to 15 years (R. 651, 906, 628, 201, 412, 462, 467, 708, 736, 634, 747, 731, 540, 631, 643, 636, 648, 685, 751, 642, 184, 598, 555, 662, 792, 665, 448, 460, 614, 655, 756, 753, 619, 513, 527, 531, 611, 603, 486, 544, 946, 471, 596, 600). Many of them were highly skilled in handling rare metals and would be difficult to replace (R. 133–138, 141–145). The improbability that respondent intended perma-

[9] The seriousness of the court's error is apparent from the fact that the finding of refusal to bargain was basic to many parts of the Board's order, including the direction to cease and desist from refusing to bargain collectively, the direction to bargain collectively with the Union, the direction to reinstate upon request all employees who on February 17, 1937, went on strike as a result of the refusal to bargain, and the direction to make whole any employees refused reinstatement after such request. Cf. *Jeffrey-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, No. 970, May 23, 1938; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875, certiorari denied, No. 907, May 23, 1938.

nently to sever employment relationships of such long standing and value is corroborated by respondent's attempt to persuade 53 of them to return to work (R. 1216, 446–447, 449, 452–453, 458, 460, 563, 569–574, 586–587, 618, 731, 734–735, 907) with offers of a raise in wages plus pay for the time the plant was closed (R. 1138, 1136, 1145, 1152, 1175, 926, 992, 1331–1332), and by respondent's admission at the hearing that it did not exclude anyone from returning to work because of his purported discharge or because of his participation in the "sit-down" (R. 1215–1216, 1254–1255, 1299, 1910, 831). Moreover, the court seriously misinterpreted even those facts which were undisputed. Thus the court regarded the acts of violence and of disregard of the injunction as a cause of the discharges (R. 1987–1988), although it cannot be questioned that they could have constituted no basis therefor since they did not occur until subsequent to February 17.

Under all the circumstances, the Board, we submit, properly concluded that the discharges actually constituted nothing but a familiar tactical maneuver designed merely to counteract the force of the strike by confronting the employees with an apparent loss of their positions, and thus bring about a capitulation upon respondent's terms. The finding is supported by judicial precedent [10] and

[10] Cf. *Jeffrey-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *Densten Hair Co. v. United Leather Workers*, 237 Mass. 199, 129 N. E. 450.

by the Board's own experience.[11] The conclusion by the court below that the finding cannot be supported upon the evidence is plainly erroneous.

4. Under Section 10 (c) of the Act the Board is expressly empowered to require reinstatement of employees, and as shown above, *supra*, pp. 22–24, the strikers here ordered reinstated remained employees for the purposes of the Act since their cessation of work was due to respondent's unfair labor practices and was a labor dispute (Section 2 (3) and (9)). The sole remaining question, therefore, is whether the Board's reinstatement order represented, under the circumstances of this case, an abuse of discretion. The court below did not hold that the order was arbitrary, and we submit that it was not. Concededly, respondent actively importuned many of those who had occupied its premises and resisted eviction to return to work; gave raises, and pay for the period of the strike, to those who accepted its offers of reinstatement; and freely admitted at the hearing that it did not consider anyone as disqualified from employment by reason of his participation in the sit-down or violence (R. 1216). Moreover, the Board could properly give weight to the fact that it was respondent's open violations of the Act which caused the strike and its accompanying disorders. In view of these and

[11] *Matter of Biles Coleman Lumber Co.*, 4 N. L. R. B. 679, 701; *Matter of Stackpole Carbon Co.*, 6 N. L. R. B., No. 36; *Matter of Electric Boat Co.*, 7 N. L. R. B., No. 77; *Matter of American Mfg. Concern*, 7 N. L. R. B., No. 92.

other factors, all of which were carefully considered by the Board in its decision (R. 1960–1962, 1966–1969), its resulting judgment was clearly reasonable and its order correct.

5. In any event, even accepting the court's conclusions as to the discharge, the decision was, on the undisputed facts of this record, plainly erroneous in denying reinstatement to the 28 strikers who, as pointed out in the Statement, *supra,* p. 9, were not in the buildings at the time of the purported discharge, and who were not discharged.[12] As to these 28 employees, the court below denied to the Board a power to order reinstatement which is plainly granted to it by the Act. In cases where unfair labor practices have resulted in strikes, corrective Board orders requiring the employer to offer reinstatement to all employees who went on strike, thereby restoring the *status quo* as it existed before it was disrupted by the unfair labor

[12] The failure of the court to order enforcement of all the affirmative provisions except the reinstatement of those who had been discharged, is by the court's own reasoning, obvious error if the admitted facts are accepted (see footnote 9, *supra*). Even if participation in some feature of the strike rather than the discharge is the test for excluding employees from reinstatement, it affirmatively appears from uncontradicted evidence that at least 12 of the persons named in the complaint did not participate in any of the strike activities, but merely left the plant when the strike began (R. 81–82, 662, 762, 772, 779–783, 786, 802–803, 806–807, 824, 852–853, 1047, 1056–1057). Under such a theory the court should not have set aside even the order of reinstatement, but should have modified it to cover only those who had not participated in violence or the "sit-down."

practices, have been enforced by the courts and accorded express approval as proper remedial measures for such situations. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, No. 872, May 23, 1938; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *Biles-Coleman Co.*, 98 F. (2d) 16 (C. C. A. 9th).

CONCLUSION

The questions raised by the decision below are of substantial public importance. The decision conflicts with those in other Circuit Courts of Appeals. It is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

OCTOBER 1938.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute, or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with

or without back pay, as will effectuate the policies of this Act. * * *.

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *.

* * * * *

(f) * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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No. 426

In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PANSTEEL METALLURGICAL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 436

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FANSTEEL METALLURGICAL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1947–1971) are reported in 5 N. L. R. B. 930. The opinion of the Circuit Court of Appeals, the concurring opinion, and the dissenting opinion (R. 1980–2000) are reported in 98 F. (2d) 375.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 22, 1938. The petition for certiorari was filed on October 22, 1938, and was

granted on November 21, 1938. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether a Circuit Court of Appeals, having determined that the evidence supports the findings of the Board that an employer has engaged in unfair labor practices within the meaning of subsections (1) and (2) of Section 8 of the Act, may nevertheless properly set aside so much of the order of the Board as requires the employer to cease and desist from such unfair labor practices, and to withdraw recognition from the labor organization illegally dominated and supported.

2. Whether there was evidence to support the findings of the Board that respondent had refused to bargain collectively with the representative of its employees and had thereby engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

3. Whether striking employees whose work has ceased because of unfair labor practices and as a consequence of and in connection with a current labor dispute lose their status as employees within the meaning of Section 2 (3) of the Act for the purpose of Section 10 (c) upon their discharge for acts done as part of the strike.

4. Whether the Board has power under Section 10 (c) of the Act, and properly exercised the power in this case, to order an employer to offer reinstatement upon request to any or all of the following groups of employees who have gone on strike because of unfair labor practices committed by the employer and who:

a. During the course of the strike, engaged in a sit-down in the employer's premises and were discharged for that reason.

b. After the discharge for that reason, resisted eviction and arrest by state police officers in connection with a state injunction proceeding relating to the sit-down strike.

c. During the course of the strike did not themselves engage in the sit-down but brought food and clothing to those who did.

d. If within the above categories, were, after the conclusion of the sit-down, adjudged in contempt of court in an injunction proceeding in a state court.

5. Whether, if the Board lacked such power or if its exercise was, under the circumstances, an abuse of discretion, the court below properly set aside the order of the Board to the extent that it ordered reinstatement of employees whose only participation in the strike was their voluntary cessation of work, and as to whom there was no attempted discharge.

6. Whether, in ordering such reinstatement, the Board properly took account of a partial reorganization of operations and positions in respondent's plant made subsequent to the strike in directing that, after such reinstatement, but without disturbing the reorganization made, respondent could reduce or rearrange its staff as then constituted upon any nondiscriminatory basis, subject, however, to dismissing all persons hired for the first time after the strike.

7. Whether respondent was denied due process of law by reason of the failure of the Board to grant certain subpoenas requested by respondent at the hearing.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 95–97.

STATEMENT

Upon a charge (R. 23–24) and amended charge (R. 32–33) duly filed on behalf of the Amalgamated Association of Iron, Steel and Tin Workers of America, Lodge No. 66 (hereinafter referred to as the Union), a labor organization, the National Labor Relations Board on May 25, 1937, pursuant to Section 10 (b) of the National Labor Relations Act, issued a complaint against respondent, a copy of which, together with a notice of hearing, was

duly served upon respondent on the following day (R. 24–32). The complaint alleged, in substance, that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (5), and Section 2 (6) and (7) of the Act (R. 31). Respondent answered on June 2, 1937 (R. 69–79), and filed an amendment to its answer on June 22, 1937 (R. 79–83). A hearing was held from June 7 to June 25, 1937, before a Trial Examiner designated by the Board (R. 95–1561). On September 2, 1937, the Trial Examiner filed an intermediate report (R. 1863–1905). Exceptions to his findings and recommendations were filed by respondent and by the Union (R. 1907–1938, 1941–1944). On March 14, 1938, the Board issued its findings of fact, conclusions of law, and order (R. 1944–1971). The facts as found by the Board may be summarized as follows:

Respondent, a New York corporation, is engaged at North Chicago, Illinois, in the manufacture and sale of various products made from rare metals. Approximately 70 per cent of the raw materials used in its manufacturing processes originate in States other than Illinois, or in foreign countries, and a like percentage of its finished products are shipped to States other than Illinois and to foreign countries. The value of its manufactured products during 1936 was about $1,050,000. Respondent has few competitors; none in some of its fields (R. 1947).

Until early in July 1936 no labor organization existed at respondent's plant (R. 1947). At that time a group of respondent's employees organized the Union (R. 1947–1948). Shortly thereafter respondent applied for membership in the National Metal Trades Association, and hired from that organization one Johnstone, a labor spy (R. 1952–1953). Johnstone joined the Union, made inquiries as to Union membership, furnished respondent written reports of Union activities, and urged the men to use militant tactics and to strike (R. 1954–1955).

A substantial number, but not a majority, of respondent's employees joined the Union prior to September 10, 1936 (R. 1956). On that day a bargaining committee of the Union called on Anselm, respondent's superintendent, to present a proposed collective bargaining contract and negotiate for its acceptance (R. 1948). Anselm required that the committee be composed only of employees who had worked for respondent for more than five years (R. 1948). This condition was met, but Anselm, while objecting to certain provisions of the contract, stated that respondent's policy was to refuse recognition to "outside" unions (R. 1948–1949). No question was raised as to whether the Union represented a majority of the employees (R. 1948–1949).

At this September 10 meeting Anselm had suggested that the men consider a union without "outside influences" (R. 1948). Pursuant to that

suggestion Anselm and the foremen thereafter requested employees to quit the Union, and circulated a petition for the formation of an "inside" union, which the employees were urged to sign (R. 1950–1951). The attempt was abortive, and the campaign was suspended (R. 1951).

The Union committee again called on Anselm on September 21. The Union had voted to include as a member of the committee an organizer of the Union who was not an employee of respondent. Anselm, after angrily insisting that the "outside" organizer withdraw, denied that any appointment had been made with the committee, and it left (R. 1949–1950).

From November 1936 to January 1937 respondent required the president of the Union to work in a room adjoining the office of the superintendent, and forbade him to go to the plant or associate with other employees (R. 1951–1952).

By February 17, 1937, 155 of respondent's 229 production and maintenance employees, an appropriate unit for collective bargaining (R. 1955–1956), had joined the Union and designated it as their collective bargaining representative (R. 1955–1957). On that date the Union committee met twice with Anselm. At each meeting he refused the Union's demands for collective bargaining on the ground that respondent would not deal with an "outside" union (R. 1957).

Shortly after the second meeting, which took place at 2 P. M., and because of respondent's refusal to bargain collectively and other unfair labor practices, the Union began a strike which was accompanied by a "sit-down" in two of the key buildings of the plant (R. 1958, 1966).[1] A few hours after the strike began, Anselm, respondent's superintendent, and Swiren, respondent's counsel, went to each of the buildings and demanded that the men leave. Upon their refusal, Swiren announced in loud tones that all the men in the plant were discharged for the seizure and retention of the buildings (R. 1958, 1961).[2]

On February 18, 1937, respondent secured an injunction from the Circuit Court of Lake County, Illinois, which required the men to vacate the buildings (R. 1958, 1794–1795). The men refused to leave, and on February 19, 1937, successfully resisted an attempt by the sheriff and his deputies to evict and arrest them (R. 1958–1959). Efforts at

---

[1] Of the 93 employees named in the complaint, 28, mostly women and employees on the night shift, did not participate in the sitdown (R. 1958; p. 38 *infra*).

[2] The petition for certiorari (pp. 27–29) urged that the announcement by Swiren was not a real discharge, but a mere tactical maneuver, as the Board found (R. 1961). Because respondent claims that it had no full opportunity to be heard on that question, and in view of the decision in *Consolidated Edison Co.* v. *National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938, we do not here urge the point, believing that it is irrelevant to the validity of any portion of the Board's order.

mediation on the part of the United States Department of Labor and the Governor of Illinois were rebuffed by respondent, who continued unwilling to meet with the Union (R. 1959). On February 26 the sheriff and an increased force of deputies evicted the workers who remained in the plant and placed them under arrest (R. 1959).

The strike continued after the ejection of the strikers (R. 1960–1961). On March 3 and 5, 1937, written requests were presented to respondent for collective bargaining meetings. Each time, in a written reply, respondent refused the request (R. 1959–1960).

As soon as the strikers were ejected, respondent began preparing to resume operations. A skeleton crew of 30 or 40 began work on March 1; by March 12 the restaffing was approximately complete (R. 1959–1960). A large number of the strikers, including many who had participated in the occupation of the buildings, were individually solicited to return to work, with back pay during the period of the strike, but without recognition of the Union (R. 1959–1962). Some strikers accepted this offer and were reinstated by respondent; others refused to return without Union recognition and mass reinstatement and were still out at the time of the hearing (R. 1960–1961). New men were hired to fill the positions of those remaining on strike (R. 1959). At the time of the reopening, respondent reorganized its plant by abolishing certain departments (R. 1967–1968).

Early in April a labor organization known as Rare Metal Workers of America was organized among respondent's employees (R. 1962–1963). Its appearance was the culmination of respondent's long and determined campaign to limit its employees' means of representation to an "inside" union. It was immediately accorded various forms of support, including precipitate recognition (R. 1963–1965). The facts are more fully stated at pp. 73–77, *infra*.

In June, a number of the sit-down strikers were fined and given substantial jail sentences by the Circuit Court of Lake County for violating the injunction (R. 1959).[8]

Upon the basis of these findings, the Board concluded that respondent, by engaging in espionage upon the Union, by isolating the Union president, by urging employees to abandon the Union, and by other acts, had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act (R. 1955); that respondent, by dominating and interfering with the formation and administra-

[8] Thirty of the employees named in the citation for contempt were reinstated by respondent, and upon their return to work their cases were continued indefinitely (R. 1760–1761, 1784, 1800–1801), although respondent's own witnesses identified many of them as leaders in the violence and testified that all had participated (see pp. 51–53, *infra*). All those who received sentences were strikers who refused to abandon their efforts to obtain collective bargaining (R. 1741–1759, 29). Included among those sentenced were 8 who had been individually solicited by respondent to return to work and had refused (R. 76, 81–82, 334, 449, 562, 563, 569–570, 586, 1074, 1241–1242, 1745, 1746, 1751–1754, 1756, 1923).

tion of, and contributing support to, the Rare Metal Workers of America, had engaged in unfair labor practices within the meaning of Section 8 (2) of the Act (R. 1962–1965); that on February 17, 1937, the Union, having been designated by a majority of respondent's production and maintenance employees as their bargaining agent, constituted the duly designated collective bargaining representative of all the employees within an appropriate unit (R. 1955–1957); and that respondent, by refusing to bargain with the Union on February 17, 1937, had engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act (R. 1957–1958).[4] The Board found that respondent had not engaged in unfair labor practices in violation of Section 8 (3) (R. 1961–1962, 1969).

The Board found that to effectuate the policies of the Act, conditions should be restored to the state existing before the strike caused by respondent's unlawful conduct. This required the restoration of the strikers to their jobs. The Board fully considered respondent's contention that the strikers should not be reinstated because of their participation in the sit-down aspect of the strike and related conduct, but concluded that this did not render the normal reinstatement remedy inappro-

[4] The Board also found that respondent's refusal of the Union's requests for collective bargaining on March 3 and 5, 1937, were unfair labor practices within the meaning of Section 8 (5) (R. 1959–1960, 1962, 1969). We believe these conclusions to be correct, but need not press them, inasmuch as no part of the Board's order is dependent upon them.

priate (R. 1966–1967). The Board also found that respondent had voluntarily sought out and taken back a large number of the sit-down strikers (R. 1966–1967).[5]

The order of the Board (R. 1970–1971) requires respondent to cease and desist from the unfair labor practices found. As affirmative action which the Board found would effectuate the policies of the Act, respondent is required to bargain collectively with the Union; to withdraw recognition from and disestablish the Rare Metal Workers of America as representative of its employees for collective bargaining; upon their application, to offer immediate and full reinstatement to those employees who went on strike on February 17, 1937, dismissing, if necessary, all persons hired since that date; to make whole all strikers for losses they may suffer by reason of any refusal of their applications for reinstatement in accordance with the order; and to post appropriate notices.

On March 24, 1938, respondent, pursuant to Section 10 (f) of the Act, filed in the court below a pe-

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[5] The Board took account of the fact that reorganization of respondent's operations after the strike might make it impossible for respondent to retain all of the reinstated strikers, and accordingly directed that, after the reinstatement necessary to remedy the unfair labor practices, respondent was free to reduce its entire staff as then constituted on any non-discriminatory basis (R. 1967–1968).

tition to set aside the Board's order (R. 1–17). The Board answered, requesting full enforcement of its order (R. 18–22). On July 22, 1938, the court, Judge Treanor dissenting, set aside the entire order (R. 1980–2000). On November 21, 1938, this Court granted a writ of certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that the findings of the Board that respondent on February 17, 1937, refused to bargain collectively with the duly designated representative of its employees, thereby engaging in unfair labor practices under Section 8 (1) and (5) of the Act, are not supported by evidence.

2. In holding that respondent's attempt to discharge certain employees immediately after the start of the strike and for activities which were a part of the strike, deprived the Board of power to reinstate those employees.

3. In not holding that all persons who went on strike on February 17, 1937, because of respondent's unfair labor practices continued thereafter to be employees within the meaning of Section 2 (3) of the Act for the purpose of Section 10 (c) of the Act empowering the Board to order reinstatement necessary to effectuate the policies of the Act.

4. In not holding that despite misconduct on the part of some of the strikers, the Board had the

power and, under the circumstances of this case, properly exercised its discretion to order respondent to offer reinstatement to all employees who went on strike on February 17, 1937, because of respondent's unfair labor practices.

5. In not holding that the Board could properly require respondent, in reinstating the striking employees, to distribute all available positions among such employees and the other employees hired before February 17, 1937, who resumed work, in a non-discriminatory fashion.

6. In denying enforcement to those portions of the cease and desist and affirmative provisions of the Board's order which were based upon findings, supported by evidence, of violation of Sections 8 (1) and (2) of the Act.

7. In setting aside the Board's order, and in not granting full enforcement thereof.

SUMMARY OF ARGUMENT

I

The cease and desist portions of the order directed to violations of Sections 8 (1) and (5) of the Act are valid if the findings of the Board are supported by substantial evidence. *Consolidated Edison Co.* v. *National Labor Relations Board,* Nos. 19, 25, decided December 5, 1938. The findings were so supported.

A. The Board's conclusion that respondent had violated Section 8 (1) is based upon the separate

findings that respondent: had engaged in industrial espionage; had deprived the employees of their right to freely chosen representatives by dictating who might and who might not serve on the Union bargaining committee; had attempted to thwart the right of its employees to join an organization of their own choosing by its opposition to their "outside" union and its favoring of an "inside" union; and had attempted to hinder Union organization by isolating the Union president from the other employees. The evidence supporting each of these findings, which is clear and convincing, is detailed at pp. 23–32, *infra*.

B. There is also plain and unequivocal evidence that respondent failed to bargain collectively with the representatives of its employees in violation of Section 8 (1) and (5). Two requests to bargain were made on February 17, 1937, before the strike, and each request was denied solely because respondent refused to recognize its obligations under the Act. The contrary conclusion of the court below is based upon an obvious mistake as to the sequence of events.

II

A. The Board's order of reinstatement based upon the violation of Section 8 (1) and (5) was in all respects proper. Respondent's whole course of illegal conduct was responsible for the strike, and under such circumstances the normal and proper

means by which the *status quo* may be restored is the reinstatement of the strikers to positions of employment.

1. That normal and proper remedy is not beyond the power of the Board in this case because of the attempted discharge of some of the strikers for engaging in a sit-down. First, the discharge did not remove those strikers from the class of persons described as "employees" under Section 10 (c) of the Act, which in terms gives the Board power to order reinstatement of such persons. Plainly the strikers here were within that category when the strike took place, and since the Act specifies only one way in which this statutory status may be ended—by equivalent employment elsewhere—it is reasonable to assume that Congress intended that status to continue despite an attempted discharge, at least for the remedial purposes of the Act. *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575. Once an unfair labor practice has occurred, the employer, although free to terminate the normal incidents of the employee relationship for cause, may not destroy the power of the Board to remedy his unfair labor practices, so long as the remedy required will effectuate the purposes of the Act.

Second, even if the reinstatement was not of "employees", nevertheless the order is valid. Section 10 (c) empowers the Board to require "such affirmative action, including reinstatement of em-

ployees * * * as will effectuate the policies of this Act." The clause—"including reinstatement of employees"—is clearly illustrative and not intended as a limitation. The use of the word "including" and the reports in Congress each confirm what is but in any event the normal construction—that the Board shall have plenary power to remedy the effects of unfair labor practices, including the power to require re-employment of former employees where that is required in order to effectuate the policies of the Act.

2. Nor was it an abuse of discretion for the Board to conclude that reinstatement would effectuate the policies of the Act. The Board could have effectually restored the *status quo* and dissipated the effects of respondent's unfair labor practices in no other way. Respondent cannot object to the reinstatement of the men on the ground either that they had been guilty of misconduct or had been discharged because by reinstatement of strikers in each category it has itself shown that it regards neither fact as a bar to reinstatement. Respondent was willing to reinstate all the strikers who would surrender their right to bargain through the Union. Hence, the Board's order simply obliterates the distinction which respondent itself has drawn among strikers on the basis of their willingness or unwillingness to abandon the Union. So far as the policy of the Act is concerned, there is no reason to suppose that Congress intended additional penalties under the Act for men who had

been guilty of misconduct. Employee wrongdoing is a factor to be taken into consideration by the Board, but under the circumstances of the present case it was not an abuse of discretion to order reinstatement.

3. The order of the Board properly required offers of reinstatement to all the strikers, even though respondent claimed that certain strikers were inefficient, and that it had abolished some positions by reorganizing its plant. Respondent, after complying with the order, may reduce or reorganize its staff on any non-discriminatory basis. The order simply avoids imposing on the strikers alone the burden of loss of jobs through reduction of positions—a burden which they would have shared with the non-strikers, and those who returned to work on respondent's terms, had no strike occurred.

4. The provision which requires back pay only from the time when application for reinstatement is made by the strikers and is refused by respondent is proper. The provision is so framed because until such application is made the strikers are not available for work and should not therefore be paid for loss of time. After such a refusal, however, it is only respondent's failure to recognize its obligation under the Act which prevents them from earning wages, and for that time it is proper that respondent should make the strikers whole. The payments are not penalties merely because they continue to accrue while the validity of the order is

being litigated. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Consolidated Edison Co.* v. *National Labor Relations Board, supra.*

B. The order properly requires respondent to bargain collectively with the Union upon request. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515. The evidence shows that when the other provisions of the order are complied with by the reinstatement of the strikers and the discharge of those first employed since the unfair labor practices, the Union will have a clear majority in the appropriate unit. Even if the facts were not thus clear, some such presumption would be necessary to make the Act workable. *National Labor Relations Board* v. *Remington-Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, 304 U. S. 576.

III

The Board's finding that respondent dominated and interfered with the formation and administration of the Rare Metal Workers of America in violation of Section 8 (2) of the Act is supported by clear and convincing evidence, which is detailed on pp. 73–77, *infra.* On the basis of that violation, the Board properly ordered respondent to cease and desist, and to withdraw recognition from the R. M. W. A. Withdrawal is proper under the Act for two separate reasons. First, it is simply the correlative of the order requiring respondent to bargain with the Union. *National Labor Rela-*

tions Board v. *Jones & Laughlin Steel Corp., supra,* at 44–45. Second, the provision is necessary to dissipate the effects of respondent's violations of Section 8 (2). The critical fact is not the structure of the union, which respondent stresses, but whether continuance of recognition will in fact interfere with the employees' freedom of self-organization. The Board's conclusion that it would was correct. A contrary conclusion would permit respondent to continue to reap the fruits of its violations of Section 8 (2).

IV

Respondent was not deprived of due process of law by the Board's rulings on its applications for certain subpoenas. The argument is brief, and need not be restated here. See pp. 84–93, *infra.* The answer to the contention is that respondent, by its privilege of applying to the Circuit Court of Appeals for leave to adduce additional evidence under Section 10 (e) and (f), was afforded a full remedy under the Act for any erroneous action of the Board. Not having availed itself of that privilege, respondent has no ground for complaint. *Consolidated Edison Co.* v. *National Labor Relations Board, supra.*

ARGUMENT

The order of the Board, which was set aside in its entirety by the court below, divides naturally into several quite separate parts, which may, for convenience, be considered in separate points. Ac-

cordingly, we shall show, first, that the cease and desist portions of the order based upon violations of Section 8 (1) and (5) were based on findings supported by substantial evidence, and should have been enforced. Second, we shall consider the provisions of the order requiring affirmative relief to correct those violations, and show that they were plainly within the power of the Board and were designed to effectuate the purposes of the Act. Third, we shall show that the evidence supports the Board's finding that respondent had violated Section 8 (2) and that the affirmative relief required because of that violation was proper in all respects. Finally, we shall discuss respondent's contention that it was denied a fair hearing by the Board's alleged failure to grant its applications for certain subpoenas.

I

THE PROVISIONS OF THE ORDER REQUIRING RESPONDENT TO CEASE AND DESIST FROM VIOLATIONS OF SECTION 8 (1) AND (5) SHOULD HAVE BEEN ENFORCED

The court below, as we have already stated, set aside the entire order of the Board. It is far from clear why it did so. The findings of the Board that respondent had violated Section 8 (1) of the Act, and Section 8 (2), to which we shall refer in Point III, *infra,* were specifically held to be supported by substantial evidence (R. 1987–1991, 1993–1994). Yet without explanation the court refused to enforce even the cease and desist portions of the Board's order based upon these violations.

One possible explanation for the result reached by the court is that suggested in the petition for certiorari (pp. 16–21)—that the court was applying to the instant case the doctrine which it had previously advanced in *National Labor Relations Board* v. *Columbian Enameling and Stamping Co.*, No. 229, to be argued with the present case. There the court below found an act of the employees to be illegal, and as a consequence decided that the *Board* was disabled—estopped—to take *any* action to halt or correct their employer's unfair labor practices. That decision we believe to be untenable, for the reasons set out at length in our brief in that case, to which the Court is respectfully referred.

Respondent, it should be said, does not attempt to sustain this portion of the decision below on the *Columbian* doctrine. Indeed, in its Brief in Opposition to certiorari respondent does not even mention the cease and desist portions of the Board's order. Since it does, however, assert that the entire order of the Board was properly set aside, we shall deal with the contention briefly. In our view the issuance of the cease and desist portions of the order are expressly required by the Act once a violation of any of the subdivisions of Section 8 is found (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265) and the only question is whether there is substantial evidence to support the Board's finding that the unfair labor practice was committed. *Consolidated*

Edison Co.* v. *National Labor Relations Board, **Nos. 19, 25, decided December 5, 1938. We shall show, therefore, that the Board's findings are so supported.**

A. THE BOARD'S FINDINGS THAT RESPONDENT VIOLATED SECTION 8 (1) OF THE ACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

The Board's conclusion that respondent had violated Section 8 (1) of the Act, *infra,* p. 95, was based upon several separate findings: (1) that respondent had utilized industrial espionage; (2) that it had dictated who might and who might not serve on the Union's collective bargaining committee; (3) that it had announced to the Union's committee that it would not recognize an "outside" union; (4) that it had urged the employees, by pressure and threats, to form an "inside" union to replace the Union; and (5) that it had for a time isolated the president of the Union from the other employees. Each of these acts is a plain violation of Section 8 (1), and each of them is proved by substantial evidence which is, in the main, undisputed.

1. The labor spy was supplied to respondent through the medium of the National Metal Trades Association, which respondent joined on August 17, 1936 (R. 338, 1660–1661), within a short time after union organization had begun for the first time in the history of the plant (R. 165, 171–181, 185, 220–224). On the day following respondent's

application for membership,[6] Aitchison, respondent's president (R. 132), entered into an oral agreement with the Association for the employment of one Albert Johnstone in its plant (R. 374, 339–341, 344, 380–381).

Aitchison testified that Johnstone was hired to make criticisms and recommendations with respect to equipment and management (R. 339–341, 363–372). Abbott, manager of the Association, testified that Johnstone was "a confidential operative * * *

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[6] The Association had as one of its purposes assisting businesses to operate on an open shop basis, and Aitchison testified he agreed 100 per cent with their view on that question (R. 347, 342, 376). The constitution of the Association provides that in the case of a strike at the plant of any member the Association will "assist in procuring workers to replace the strikers"; that "no member shall adjust with his employees a strike or any difficulty with his employees the settlement of which involves a violation of "the constitution or principles of the Association"; and that if any member settles a "difference or strike" without the consent of the Administrative Council of the Association, he "shall repay" all moneys expended on his behalf by the Association and be subject to expulsion (Bd. Ex. 30, Art. XIII, Secs. 3, 6, 7, R. 1686–1687, 342, 346–350). The Declaration of Principles adopted by the Association prohibits its members from dealing "with striking employees as a body" (Bd. Ex. 30, R. 1693), a requirement contrary to the duty to bargain collectively with strikers imposed by Section 8 (5) of the Act. At the hearing Aitchison denied knowledge of these specific provisions in the Association's constitution and principles. But the application for membership which he signed contains at the beginning quotations from the foregoing provisions and the respondent complied fully with their terms and received strikebreakers from the Association (R. 342, 345–350, 1245–1247, 1661, 1665).

assigned to the shop," whose previous experience had been in the service of two other labor espionage agencies (R. 374, 379–382).[7] Johnstone had no qualifications for judging efficiency or management and was incompetent as a machinist (R. 374–375, 379–381, 1317–1318, 392–394, 398). Respondent represented Johnstone to the employees as a machinist and he was paid a machinist's wages, but he received additional pay and expenses for his further services either from the Association or from respondent (R. 369, 339, 343–344, 383).[8]

Johnstone's position may also be judged in the light of his activities. He immediately joined the

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[7] There can be no doubt that the Association was largely engaged in affording complete industrial espionage service to its members at this time. See Sen. Rep. No. 46, 75th Cong., 2d Sess., Pt. 3, pp. 19–20; Hearings, under Sen. Res. 266, 75th Cong., 1st Sess., pp. 809–952. On September 27, 1937, the Association notified the Senate Subcommittee that it had decided, in the early part of 1937, "to discontinue all undercover or surveillance service, all furnishing of guards, and all furnishing of employees to take the place of strikers, and pursuant to this policy all these services have been discontinued." Hearings, *supra*, pp. 5513–5514.

[8] Aitchison testified that respondent paid to Johnstone directly a total of $350 in addition to his $348 wages as a machinist, or almost $200 per month for the time Johnstone was in the plant, and that it paid nothing to the Association (R. 343–344). Abbott testified that respondent paid the Association $225 a month less Johnstone's wages as a machinist and that the Association, after deducting $25 per month as its fee, paid the remaining sum to Johnstone (R. 380–381). Respondent did not attempt to resolve this conflict in the evidence.

Union and assumed the familiar labor spy role of the "radical". He attended all the meetings, made inquiries as to union membership, and urged aggressive action, including a strike (R. 387–389, 394–395). Both Aitchison and the Association received weekly reports from him, which were destroyed after they had been read (R. 340, 359, 344, 366, 372).[9] Aitchison admitted that some of these documents dealt with union activities and named the union officers and the speakers at meetings (R. 341, 359, 360). In December 1936 respondent discontinued its use of Johnstone's services (R. 1317, 339, 344, 378–379).[10]

This evidence can leave no doubt that the Board's finding that respondent had employed Johnstone for the purposes of industrial espionage

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[9] At first Johnstone's reports were sent to him by the Association and thence to Aitchison at his home, the Association application having directed "because of the confidential nature of the Association's correspondence it is desirable that all mail sent be addressed to some particular individual" (R. 340, 344, 378, 1661, 1665). After the Association's records were subpoenaed by the Senate subcommittee, Johnstone sent his reports directly to Aitchison (R. 340, 378). After the strike Aitchison informed the Association "that the occasion for addressing communications to me at my home * * * has passed" and directed that mail be sent directly to his offices (R. 1659).

[10] The fact that the practice had been discontinued prior to the entry of the order did not, of course, affect the propriety of the cease and desist provision of the order. *Consolidated Edison Co.* v. *National Labor Relations Board*, *supra*.

is supported by substantial evidence. As we have stated, the court below so held (R. 1987, 1990–1991, 1993–1994). Nor is there doubt that this thoroughly reprehensible practice, unquestionably designed to interfere with the rights of employees guaranteed them by Section 7 of the Act, is a violation of Section 8 (1). *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 54–55; *Consolidated Edison Co.* v. *National Labor Relations Board, supra.* On this basis alone the cease and desist order relating to Section 8 (1) should be enforced.

2, 3, and 4. The evidence with respect to respondent's dictation of the personnel of the Union's collective bargaining committee, its open and often expressed opposition to "outside" unions, and its attempts to persuade the employees to form an "inside" union is necessarily overlapping and may be more conveniently set out as a unit. Prior to June or July 1936 there had never been a labor organization of any kind at respondent's plant (R. 165). The Union, which was organized at that time (R. 171–181, 220–225), immediately met a hostile reception designed to hinder and obstruct its efforts. President Aitchison, upon learning of its formation, discussed with the employees why they wanted a labor organization (R. 202–203, 312, 315–316). Foremen attempted to influence the newly initiated Union members to resign (R. 895–896, 738–740, 764–765).

In September 1936 respondent recalled one Anselm, who had been away from the plant for three years, to become superintendent (R. 881, 999, 1351, 1356). Anselm was aware that the employees thought that "I am back here to break up the union" (R. 468, 1352). He soon justified the reputation. Almost his first act was to build a high fence around the plant—an improvement suggested by Johnstone's reports and regarded by the employees as an anti-union measure (R. 468, 359, 239).[11]

On September 10, 1936, two days after Anselm's return, the Union, believing that it represented a majority of the employees, asked him to meet with its bargaining committee (R. 187–188, 291, 282,

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[11] The significance of the fence is explained in Fitch, John A., *The Causes of Industrial Unrest* (1924), pp. 209–210, "Where strikebreakers are to be employed, or a new force taken on, it is often advisable to have a fence or stockade around the plant. * * * It is a common belief among labor men that they were built for use in time of strike. * * * The fence makes it possible to conceal what is going on inside. If there is noise and smoke the usual inference is that work is being done. This may not be the case, but if no one can see into the plant, the illusion may be kept up and the morale of the strikers broken. Sometimes the new crew is housed and fed inside the plant. In such a case the fence undoubtedly affords valuable protection. It is useful also to keep new workers from leaving, if any should desire to do so. Sometimes a man is hired for a strike job who has no desire to take another man's place and whose first knowledge of the strike is obtained on his arrival at the plant. Such a man leaves as soon as opportunity presents itself. When he is inside a fence with armed guards all about, it is sometimes more difficult to get away than may be imagined."

285–287, 225–226). Anselm agreed to do so on condition that the committee be composed only of persons employed by petitioner for at least five years (R. 205, 252). The condition was in violation of Section 8 (1); the Act does not permit an employer to dictate who may and who may not be chosen by the employees as their representatives. The Union, however, acceded, and presented a proposed contract (R. 204–205, 252–253, 282, 283, 289, 316). Anselm read the document and stated that it was "a fair contract", and that the men would in time obtain "everything that was in the contract except union recognition." He explained that respondent was determined not to deal with "outside" unions and expressed the desire that the men form an "inside" union (R. 316, 253, 204, 209, 217, 283, 286). Anselm also expressed the view that the Act did not support the men's claim of a right to bargain through any organization they chose (R. 297). Finally, he entered into a discussion of unions in general, and terminated the conference by handing to the committee members copies of an "employee representation plan" which he desired to be substituted for the Union (R. 253–255, 290, 218, 284, 291, 316, 433–434, 867).[12]

[12] There is conflicting evidence as to Anselm's activities immediately after this meeting. He testified that he approached about a dozen of the oldest employees individually, inquired concerning their attitude toward the contract and the Union, and was told that they did not know of the contract and would like to resign from the Union (R. 1349–1354,

This recommendation of an "inside" union was followed by a vigorous campaign on the part of respondent to obtain its acceptance. Anselm himself circulated among the employees petitions calling for an "inside" union (R. 430–436, 891–893, 896–897). All of the employees were solicited to sign the petitions by foremen and other officials during working hours (R. 867–872, 877, 880–889, 911–915). The men were told they had "better" sign (R. 869, 867, 871, 880, 884, 886–889, 911–913). At the same time "employee representation plan" literature was posted on the bulletin boards and distributed among the employees by their foremen (R. 1646, 259, 284, 316, 326, 430–431). Despite its vigor, however, the campaign was unsuccessful and was temporarily dropped (R. 1350–1352, 1357–1359).

On September 21 the Union committee made its second attempt to bargain (R. 249–250, 255, 264, 327). This time the Union had selected as a member of its bargaining committee one Adelman, an organizer for the international union with which the Union was affiliated (R. 220–221, 229–230, 317). Anselm violently objected to his presence. He shouted that "I am not meeting any outsiders" and ordered Adelman to leave, which he did (R. 230–

1357, 1359). The employees in question testified, however, that they had known of the contract and had so informed Anselm, whereupon he instructed them to "quit" the Union, stating that "I want to break this thing up" (R. 413, 423–426, 437, 872–876, 896–897). Whichever version is correct is immaterial, since in either event Anselm's activities clearly violated Section 8 (1) of the Act.

231, 255–256, 263, 317, 237, 285). Anselm then repeated that respondent would not deal with "outside" unions or persons, denied that the committee had an appointment to meet him, and terminated the interview (R. 231, 256, 286, 318). Again Anselm had assumed a power to decide who could and who could not represent the employees—in violation of Section 8 (1) of the Act.

This brief summary shows that the Board's finding had substantial support in the evidence. Respondent had twice dictated who might and who might not serve on the Union's bargaining committee—thus frustrating the right to representatives of their own choosing guaranteed by the Act—and it had displayed its open antagonism to "outside" unions and its equally open favor of an "inside" union. Its acts were designed to, and had the effect of, discouraging the exercise by its employees of their right of self-organization and to be represented by a freely chosen representative in collective bargaining negotiations.

5. The evidence with respect to the isolation of Kondrath, the president of the Union, is equally clear. Kondrath was a machinist, who had worked for respondent for over 12 years (R. 171). On November 11, 1936, Anselm instructed him to work thereafter in a room adjoining Anselm's office. Anselm stated that Kondrath was not to go from this room, located in the administration building, into the plant proper, and was not to associate with

the other employees (R. 438–439, 383, 171). This isolation of Kondrath continued until the end of January (R. 440, 274). It stands unexplained in the record save as an obvious attempt to deprive the Union members, at a critical point in the organization's existence, of all contact with the man they had selected as their leader. It was designed to weaken the morale of the Union members and to show respondent's opposition to that organization, and was a violation of Section 8 (1).

B. THE BOARD'S FINDING THAT RESPONDENT VIOLATED SECTION 8 (5) OF THE ACT IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The court below held that there was no evidence to support the finding that respondent had refused to bargain collectively with the representative of the majority of its employees in violation of Section 8 (5). This determination, however, was based solely upon the ground that the employees had been discharged when the request was made (R. 1987). That ground misconceives the correct sequence of events. Actually, it is undisputed that the refusals to bargain on February 17, 1937, occurred several hours prior to the strike and the subsequent purported discharge.

A brief statement of the events of that day will show both the correct time sequence and the refusal to bargain. About 9 A. M. the Union committee called on Anselm and requested a meeting with the management for the purpose of collective bargaining (R. 257, 258). Anselm replied that such a meet-

ing would be futile since respondent would not recognize an "outside" union (R. 257). Upon the committee's insistence, Anselm conferred with President Aitchison, who refused even to meet with the committee (R. 257, 270, 271, 289).

At Anselm's suggestion, the committee returned at 2 P. M. Again they met the same refusal to bargain. Anselm stated (R. 258, 289):

> It is still the same. We can't recognize an outside union. If you fellows want to call it a shop committee, why we will give you collective bargaining; but under the leadership of outsiders, the Amalgamated Association of Iron, Steel, and Tin Workers, we will not.

It was only after, and as a direct result of this last manifestation of respondent's constant and intransigent determination to deny its employees any freedom of self-organization and all right to bargain collectively, that the strike occurred.

The above statement makes it plain that respondent refused to bargain with the Union, and that it did so solely because of its insistence that the employees be not represented by a labor organization with national affiliations. Refusal on that ground was a violation of Section 8 (5) of the Act. Respondent did not object to the demands which the Union made, nor did it question the authority of the Union to represent its employees. Indeed, the Board found that the employees paid on an hourly

basis, exclusive of engineering, laboratory, supervisory, and clerical employees, constituted a unit appropriate for collective bargaining (R. 1955–1956), and respondent stipulated that on February 17, 1937, there were 229 employees in this unit, 155 of whom were members of the Union (R. 188, 1004, 1338–1343, 1656–1659, 1859). The Board found, therefore, that on that date the Union was the duly authorized exclusive representative of all of the employees in the appropriate unit (R. 1956–1957). Respondent's refusal to bargain must have been, and was, based solely upon an outright refusal to recognize its obligations under the Act.

We submit, therefore, that the provisions of the order requiring respondent to cease and desist from its violations of Section 8 (1) and (5) are based upon findings which are supported by substantial evidence, are valid and proper, and should be enforced.

II

THE PROVISIONS OF THE ORDER REQUIRING REINSTATEMENT OF THE STRIKERS AND OTHER AFFIRMATIVE ACTION BY RESPONDENT BECAUSE OF ITS VIOLATIONS OF SECTION 8 (1) AND (5) ARE VALID AND SHOULD BE ENFORCED

Paragraph 2 of the Board's order requires, as affirmative action which the Board found would effectuate the purposes of the Act, that respondent offer, upon application, immediate and full reinstatement to all persons who went on strike on February 17, 1936, with back pay from the date of refusal of any such application, dismissing, if neces-

sary, all persons hired since the strike began. Respondent is also required to bargain collectively, upon request, with the Union as the exclusive representative of its employees. Each of those provisions of the order is attacked by respondent, and each was set aside by the court below. Each, we believe, is valid and entitled to enforcement.

A. THE BOARD'S ORDER PROPERLY REQUIRED RESPONDENT TO OFFER REINSTATEMENT UPON APPLICATION TO ALL THE STRIKERS WITH BACK PAY FROM THE DATE OF REFUSAL OF ANY SUCH APPLICATION

The basis for the reinstatement order was the finding by the Board (R. 1966) that the strike was the direct and immediate result of respondent's whole course of conduct in refusing to recognize its obligations under the Act (see pp. 27–31, 32–33, *supra*). Reinstatement is the normal and proper remedy in cases of strikes caused or prolonged by an employer's unfair labor practices. This is especially true where, as in the instant case, the strike would not have occurred or might have terminated but for the employer's illegal refusal to negotiate with the representatives of his employees and where an attempt to dissipate the effects of such a refusal would be futile unless those to whom the duty to bargain was owed were returned to positions of employment. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, 304 U. S. 576; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d),

certiorari denied, 304 U. S. 579; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th).

There can be no doubt that the Board was correct in charging respondent with responsibility for the strike. The strike was the culmination of many months' violation of the Act (R. 288). As a result, prior to February 17, 1937, the Union had voted to its bargaining committee the power to take all steps necessary to obtain collective bargaining (R. 257–258, 269, 288). In accordance with that power, immediately after its second unsuccessful attempt to bargain with respondent on February 17, the committee decided upon a strike (R. 258, 271, 298, 329). The purpose of the strike was recognized by all the employees to be to force respondent to observe the law by bargaining with the Union (R. 273, 298, 332, 408–409, 523). The expectation was that this purpose would be accomplished by a sit-down strike of but a few hours' duration (R. 299).

Had respondent agreed to cease its violations of the Act, the strike would certainly have immediately terminated, and there would have been no vio-

lence and no damage to respondent's plant. Respondent chose, however, to continue its unrelenting efforts to destroy the Union. About four hours after the strike began Anselm and Swiren, respondent's superintendent and attorney, respectively, ordered the strikers out of the two buildings. Upon their failure to obey, Swiren announced that all employees within the buildings were discharged (R. 1780–1781, 277–278, 302, 333). The apparent purpose of this maneuver, as subsequent events showed, was not permanently to eliminate the sit-down strikers from respondent's employ, but only to aid respondent's application for a mandatory injunction requiring the strikers to vacate the buildings, which respondent obtained on the following day, upon application to the Circuit Court of Lake County, Illinois. This writ was served on the men, who refused to comply. On February 19 an attachment for contempt was issued and served (R. 1147, 1157, 1171–1172, 1782, 582–583). The men successfully resisted an attempt to evict them on February 19, but were ousted on February 26 (R. 1141, 1143, 1089–1105, 1174, 1782–1783).

Respondent continued unwilling at all times to settle the controversy by negotiation. During the time the men were in the buildings respondent repeatedly rejected efforts by the Governor of Illinois, the Mayor of Waukegan, and by Federal and state mediators who tried to persuade it to negotiate with the Union (R. 1503, 1508–1510, 491–503). Respondent was willing to meet with the strikers

"only as ex-employees, not as members of a union or a committee of the union" (R. 1507).

So much, we believe, is conceded by respondent. Its objections to the order do not deny that in the usual case of a strike resulting from unfair labor practices reinstatement would be the normal remedy. The present case is alleged to be different in that (1) the purported discharge on February 17 of those of the strikers who were engaging in a sit-down strike terminated the Board's power to order their reinstatement; and (2) even if the Board had power to order reinstatement of the strikers so discharged, to require it under the circumstances of this case would not effectuate the policies of the Act. Respondent further objects that even if reinstatement was valid and proper, the order of the Board improperly failed to take account of certain reductions of respondent's staff after the plant reopened and its claim that seven of the strikers were inefficient. Finally respondent objects to the form of the order requiring back pay. We believe each of these contentions is without merit.

1. *It was within the Board's power to require reinstatement of the strikers*

Respondent's argument that the Board lacked power to order reinstatement of some of the strikers is based upon the ground that its power was ended by the discharge of these strikers after the unfair labor practices and after the strike began. There are two answers. In the first place, the discharge did not remove the strikers from the class of persons

described as "employees" in Section 10 (c) of the Act, which in terms gives the Board power to require reinstatement of such persons. In the second place, the Board was empowered to reinstate the strikers even if they ceased to be such persons as are described as "employees" within that section.

Before discussing those points, however, it should be noted that respondent's argument is inapplicable to a substantial number of the persons affected by the Board's order. Of the employees who were ordered reinstated, 28 were not in the buildings at the time of Swiren's announcement that the occupants were discharged.[12] So far as

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[12] Of these 28 it affirmatively appears or is admitted by the pleadings that the following 12 neither participated in the sit-down nor assisted those who did: Bissonnette (R. 81–82, 1047, 1049), Butterfield (R. 81–82), Fellens (R. 81–82, 771–772), Gartley (R. 81–82, 779–783), Hoff (R. 81–82, 1056–1057, 1216), Vivian Johnson (R. 81–82, 824), Leskovec (R. 81–82, 662), Bessie Luczo (R. 81–82, 785–786), Mesec (R. 81–82, 802–803), Recktenwald (R. 81–82, 806–807), Seifert (R. 81–82, 762), Taylor (R. 81–82, 852–853); the following 16 did not take part in the sit-down but brought food and clothing to those who did: W. D. Crump (R. 1785, 463–465), Fagan (R. 1785, 674–677), Fulkerson, Jr. (R. 1785, 704–705), Furlan (R. 1785, 1036–1038), Evelyn Graimer (R. 794–796), Grom (R. 1785, 697–700), Holm, Sr. (R. 469), Otto Latz (R. 1785, 732), Lima (R. 1785, 900–903), Magness (R. 1785, 708–709), Makovec (R. 1785, 743–744), Mondro (R. 1785, 660–661), Puntarich (R. 1785, 737–738), Raynor (R. 1785, 720–727), Starovich (R. 1785, 666–669), Mike Zelenick (R. 1785, 748); as to a 29th, Weatherhead, the record fails to show he in any way participated. While the conduct of the 16 may have been a technical violation of the state court injunction, it was testified that the men did not consider it to be so as the various officers of the law sta-

the *power* of the Board is concerned, therefore, there can be no question with respect to these 28."

a. *The strikers to whom the attempted discharge applied retained the status of "employees" for the purposes of Section 10 (c) of the Act*

Section 10 (c) of the Act provides that, upon finding unfair labor practices to have occurred, the Board shall require "such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the Act." No explanation of the term "employee" is contained in Section 10 (c), but that term is defined in Section 2 (3) of the Act to include—

> any individual whose work has ceased as a consequence of, or in connection with any current labor dispute, or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

There can be no doubt, as we have shown above (pp. 36–37), that the employees here involved ceased work in connection with a current labor dispute and

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tioned around the plant supervised and cooperated in all bending in of supplies (R. 903). Many of those who brought food and clothing had husbands, sons, or fathers in the building. Their attitude in this regard was expressed by one witness, "I didn't like to see them freeze to death or starve to death" (R. 469).

[14] The court below did not state why it excluded these 28 from reinstatement. As the dissenting opinion pointed out, absent a determination by the court that the Board abused its discretion in ordering their reinstatement, the Board's order should have been enforced (R. 1991).

as a consequence of unfair labor practices, and therefore retained their statutory status as employees. Respondent is forced to contend that this status was terminated by it for purposes of Section 10 (c) after the unfair labor practices, but before the conclusion of proceedings under the Act.

But the Act specifies only one way in which this statutory status may be ended—by the obtaining of "any other regular and substantially equivalent employment".[15] It is not reasonable to assume that Congress, having specified one way in which the status might be brought to an end, intended that it might be ended by a discharge growing out of the dispute itself. Much more likely is the contrary assumption that had it so intended it would have specifically so stated (*United States* v. *Louisville & Nashville R. Co.*, 236 U. S. 318, 336; *United States* v. *Pennsylvania R. R. Co.*, 242 U. S. 208, 231), particularly as it could have done so by the simple addition of but three words—"or been discharged".[16]

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[15] Judge Treanor, dissenting, stated (R. 1993):

"The reasonable construction [of Section 2 (3)] is that one who is an employee at the inception of a labor dispute or unfair labor practice, and ceases work because of either, remains an employee as long as the labor dispute is "current" or as long as the unfair labor practice is cognizable by the Board as an obstruction to commerce."

[16] Both the comprehensiveness of the words "employee" and "labor dispute" as defined in Section 2 (3) and (9) of the Act and the explanation for the inclusiveness of the statutory scheme emphasize the inappropriateness of permitting a mass discharge under strike conditions to remove groups of persons from the jurisdiction of the Board. The Senate

This has been explicitly recognized by the only court which has passed upon the argument now advanced. In *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575,[17] the Circuit Court of Appeals for the Ninth Circuit stated (94 F. (2d) at 145):

> There is no limitation in the statute that individuals whose work has ceased as a consequence of a current labor dispute are employees only if they were not discharged prior to the effective date of the act. The reading into the statute of such a limitation would constitute an abuse of power.

Respondent attempts to distinguish the case on the ground that there the discharge was not for "good cause." If that were relevant, it is a sufficient answer to it that the discharge in the *Carlisle* case occurred prior to the effective date of the Act, and consequently was for "good cause" no matter what inspired it.

Moreover, it should be noted that we are here concerned only with the power of the Board to re-

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Report states as reasons for its broad definitions (p. 6), "If this bill did not permit the Government to exercise complete jurisdiction over such controversies (arising from unfair labor practices) the Government would be rendered partially powerless, and could not promote peace in those very widespread controversies where the establishment of peace is most essential to public welfare."

[17] The *Carlisle* decision is noted with approval in Michigan Law Review, Vol. 37, p. 144 (Nov. 1938), and Ohio State Law Journal, Vol. 4, p. 372 (June 1938).

instate employees who have ceased work in connection with a current labor dispute and because of an unfair labor practice, and who, moreover, have been discharged because of acts which would certainly never have been committed but for the employers' violation of the statute.[18] Under such circumstances we think Congress intended the statutory status of employees to continue despite such a discharge, "for the remedial purposes specified in the Act." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347. It is not necessary to decide whether, prior to the time of the commission of an unfair labor practice, a discharge for cause may entirely terminate the employment relationship. But once an unfair labor practice has occurred, the employer,

[18] We are not here concerned with the situation in which employees are discharged for reasons unrelated to the strike, nor with the situation in which the strike was not caused by an unfair labor practice. Nor are we concerned with the obligation of the employer to bargain with the representative of discharged employees under Section 8 (5). None of these situations is now before the Court. While we believe that the same consequences would follow in each case, we address ourselves here solely to the significance of the word "employee" in Section 10 (c) in the circumstances of the present case. It is true that in the instant case the Board found that respondent violated Section 8 (5) on March 3 and 5, 1937, after the assumed discharge of the strikers (R. 1959–1960, 1969). Although we believe the Board's conclusion was correct, it is not necessary to urge the matter in this Court since respondent had twice refused to bargain on February 17, 1937, prior to the discharge, and no part of the Board's order is dependent upon the additional findings of subsequent refusals to bargain.

although he is free to terminate all the normal incidents of the employment relationship, for cause, may not destroy the power of the Board to take such action as would be necessary to restore the situation as it existed prior to the employer's breach of the statute, and thus to remedy the unfair labor practices. Compare *Black Diamond S. S. Corp.* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579.[19] As a matter of discretion, it may find, for particular reasons and in particular cases, that it should not order reinstatement; as a matter of *power,* such persons remain within the compass of permissible orders of the Board found desirable to

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[19] In that case, the employees went on strike prior to any unfair labor practices by their employer. During the strike, on December 14, the employer refused, in violation of Section 8 (5), to bargain collectively. The Board required reinstatement of the strikers to positions available on that date. In enforcing the Board's order, the Second Circuit said (94 F. (2d), at 879): "When, on December 14, 1936, the Black Diamond refused to bargain with the certified bargaining agent of its employees, it violated the act and became subject to such orders of the Board 'as will effectuate the policies of this Act.' Section 10 (c), 29 U. S. C. A. § 160 (c).

"From the date of the respondent's first unfair practice, its ordinary right to select its employees became vulnerable. * * *

"* * * under section 2 (3) of the act, 29 U. S. C. A. § 152 (3), the striking engineers still remained employees, and to 'effectuate the policies of this act,' section 10 (c), 29 U. S. C. A. § 160 (c), no more is done than to maintain the status quo which existed on December 14, 1936, as against unfair labor practices which occurred thereafter."

restore the *status quo* and effectuate the policies of the Act.

This construction certainly is in accord with the terms of the Act. Nor does it in any way limit any of the normal rights of an employer except so far as is necessary to enable the Board to remedy his violations of the statute; therefore no constitutional issue is involved. The word "employee" is obviously and purposely used by Congress in the Act to refer to a defined class of persons for whom no familiar short term exists.[20] There is no attempt to invest those persons whose status is fixed for the purposes of the remedies provided in Section 10 (c) with any of the other usual characteristics of employees as they are understood apart from the Act. All the conventional incidents of the employment relation may be freely terminated by a discharge for cause, even after an unfair labor practice. Our position is well summarized in the dissenting opinion below (R. 1993):

> The obvious purpose of the Act is to continue the employee relationship as an instrumentality to be used by the Board as the basis of a reinstatement order or other affirmative action and to avoid any controversy, such as in the instant case, respecting the continuance of the relationship.

b. *The Board's order was valid regardless of whether the men remained employees*

We believe, for the reasons stated above, that the strikers remained employees within the meaning of

[20] Cf. Freund, *Legislative Regulation* (1932), pp. 218–219.

and for the purpose of Section 10 (c) of the Act, assuming their discharge from other incidents of the employee relationship, and that consequently the power of the Board to require their restoration to positions in the plant is plain. But even if, by reason of respondent's attempted discharge of some of the strikers, these men became ineligible under the Board's power to order the "reinstatement of employees" (Section 10 (c)), we submit that the Board's order is nevertheless valid as to them.

Section 10 (c) empowers the Board to require "such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." The subordinate clause is one of illustration, not of limitation upon the broad power of the Board to require "such affirmative action * * * as will effectuate the policies of this Act." It is not a part of an enumeration implying exclusion of any similar authorization. The word "including" imports but a particular instance in a general class. See *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 125n. Cf. *Springer* v. *Philippine Islands*, 277 U. S. 189, 206. The legislative history of the section shows that this was the sense in which "including reinstatement of employees" was used in this statute. The report of the Committee on Labor of the House of Representatives (H. Rep. No. 1147, 74th Cong., 1st Sess.) points out that upon a finding that anyone has engaged in an unfair labor practice, the Board will issue an order (p. 23)—

> requiring such person to cease and desist from such unfair labor practice and to take such affirmative action as will effectuate the policies of the bill; i. e., as defined in section 1, to encourage the practice of collective bargaining and to protect the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing. The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate * * *.

From this considered statement it appears that the specific power to reinstate employees was stated in the Act only because it was contemplated that this remedy would very frequently be appropriate and be exercised. The statement makes it clear that the power of the Board to require affirmative action exists as to all types of violations, that the appropriateness of its exercise is to be determined by a consideration whether, in the circumstances of the particular case, it is found to effectuate the

policies of the Act set forth in Section 1. To impute an intent that "reinstatement of employees" modifies the general power to effect industrial peace by encouraging collective bargaining and protecting freedom of self-organization would do violence to the well-accepted rule that remedial legislation is to be liberally construed to obtain the ends which Congress sought to achieve. *United States* v. *Anderson,* 9 Wall. 56, 65, 66; *Miller* v. *Robertson,* 266 U. S. 243, 248; *The Arizona* v. *Anelich,* 298 U. S. 110, 123.

Under the present point we are dealing, for purposes of argument, not with "reinstatement of employees" but with reemployment of former employees. Surely the express grant to order the former cannot be construed to eliminate power to require the second any more than it eliminates power to require the other forms of affirmative relief enumerated in the House Report when they are found by the Board, in administering the Act, to be necessary to effectuate its policies. There is no ground to suppose that if an order requiring employment to be given to persons who are no longer employees will, in some circumstances, achieve the purposes of the Act, Congress nevertheless intended to make such achievement impossible.

Whether, and in what cases, reinstatement of discharged employees will in fact effectuate the policies of the Act is a question of propriety of the exercise of the power; reinstatement might not be proper in all cases. The question whether the

remedy is appropriate in this case we deal with in Part 2, *infra*. Here we simply point out that respondent's claim that Section 10 (c) should be so narrowly construed as to deny to the Board the power to reinstate discharged employees at any time, under any circumstances, even if reinstatement would effectuate the policies of the Act, is inconsistent with the purposes of the statute and is supported by nothing in the legislation or its history.

2. *The reinstatement of the strikers will effectuate the policies of the Act*

Respondent also contends that if the Board has the power to reinstate the strikers, it was improper to exercise the power in the present case. Two arguments are advanced: that the Board should not have ordered reinstatement of employees who had engaged in a sit-down strike and violently resisted attempts of law-enforcement officials to enforce the processes of the state court; and that the Board should not reinstate men who were discharged under the circumstances of this case (see p. 37, *supra*).

Respondent undertakes, of course, a heavy burden. The character of the affirmative relief to be ordered, or whether any is to be ordered at all, is peculiarly within the "judgment and discretion" of the Board, and will not be reviewed by the court unless plainly unreasonable. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Under the circumstances

of this case, reinstatement was essential to restore the *status quo* and dissipate the effects of respondent's unfair labor practices, especially when it is remembered that none of the things respondent raises as a bar to reinstatement would have occurred but for respondent's violations of the law.

Respondent itself supplies the answer to its contention that the strikers who had engaged in the illegal acts were not qualified to be employees with the legal incidents which flow from that relationship under the Act. When the plant reopened, respondent tried to persuade to return to work the very persons whose reinstatement was ordered by the Board. True, only those who would surrender their right to bargain through the Union as their representative were permitted to return. Respondent readily reinstated all strikers who would return on these terms and conceded at the hearing that it did not exclude anyone because of his participation in the strike, the occupation of the plant or resistance to the law enforcement officers, or because of the discharge (R. 346, 831, 1215–1216, 1254–1255, 1297, 1910). Aitchison, respondent's president, testified that respondent "took back as many people as would come back" (R. 346).[21] It actively solicited 53 of the sit-down strikers to return, including 15 who refused thus to surrender

[21] With four exceptions every striker who was willing to return to work without recognition of the Union was reinstated, and respondent admitted that the four were not excluded because of any conduct during the strike (R. 1215, 1254, 1216, 1299). The respondent's attitude towards the

their rights under the Act and who are named in the Board's complaint (R. 76, 81–82, 1216, 446–447, 449, 458, 460, 563, 569–574, 579–580, 586–587, 618, 621, 831, 907). Indeed, of the strikers whom the Board ordered reinstated, in addition to the 15 sit-down strikers, at least 7 who did not participate in that feature of the strike were also individually solicited to return and refused (R. 76, 81–82, 731, 734–735, 794–796, 779–783, 824, 762, 452–453, 801, 803, 805, 808, 1074, 1923). All were offered wage increases and back pay for the time the plant was closed, and the strikers who accepted were given such increases and back pay. Among those reinstated by respondent when they agreed to return without recognition of the Union were men who had taken leading parts in the resistance to the deputies and consequent damage to respondent's

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conduct of the "sit-down" strikers appears from the following testimony of Anselm:

"Q. Now, aside from these four men, or these three men and Hoff, every man who was in the sit-down who applied for reemployment was rehired, was he not?

"A. That is my belief. I interviewed a great many men.

"Q. How many does that make who applied for reemployment and were rehired by the company who had been in the sit-down?

"A. At least 37.

"Q. Were any limitations or conditions placed upon the men who came back and asked for re-employment who had been in the sit-down?

"A. None whatever" (R. 1216).

A notice was put in the paper by petitioner offering men who returned by March 12 pay for the period the plant was closed (R. 783, 798–799, 809, 821, 813, 819, 1333, 1705). The testimony of Elmer Luke is typical of the manner in which

property.[22] On the other hand, 28 of the persons named in the Board's complaint did not participate in the sit-down, and twelve took no part whatever in any of the strike activities (*supra*, p. 39).

Nor did respondent distinguish between those who disobeyed the injunction and those who had not. Although the testimony of respondent's own witnesses showed those reinstated violated the injunction to the same extent as anyone else, the contempt citations against them were continued indefinitely and only those who refused to abandon the strike received sentences (*supra*, p. 10).

The inference is plain. Respondent's opposition to the reinstatement provisions is not based on the sit-down, the violation of the injunction, or the discharge, but on its desire to prevent the Union, now

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respondent greeted the sit-downers who returned. Luke testified that although he was in the plant from February 17 to 26, after reading the advertisement in the paper:

"I went back and had a talk with Mr. Anselm, and he said he would call me when he needed me.

"Q. He did not say that he would not take you back because of what you had done, did he?

"A. No, sir; he didn't. He shook hands and he said, 'All is forgiven' (R. 831)."

[22] Thus Chester Hook testified he squirted a foamite fire extinguisher at the deputies, threw iron spools, about 5 or 6 inches in diameter and weighing a pound and a half, at them, and broke windows (R. 1133–1134, 1137, 1139); Milton Sladek, that he squirted water at the deputies with the fire hose, threw things, broke windows, and pulled out a shutter, window and all (R. 1141–1142, 1144); Arthur Sladek, that he threw pieces of steel or anything he could lay his hands on (R. 1148, 1151); John Germer, that he threw anything that was handy and broke windows (R. 1175); that all the others

virtually eliminated from the plant, from having an opportunity to regain its position there. Of the employees remaining in strike at the time of the hearing, 22 had been in respondent's employ from 15 to 25 years, 23 of them from 7 to 15 years (R. 651, 906, 628, 201, 412, 462, 467, 708, 736, 634, 747, 731, 540, 631, 643, 636, 648, 685, 751, 642, 184, 598, 556, 662, 792, 665, 448, 460, 614, 655, 756, 753, 619, 513, 527, 531, 611, 603, 486, 544, 946, 171, 596, 600, 552). Many of them were highly skilled in handling rare metals and in view of the fact that respondent has no competitors in some of its fields, would not easily be replaced (R. 133–138, 141–145). The record affords no explanation why respondent's attitude of "All is forgiven" (R. 831) does not extend at least to the employees not discharged and not guilty of violence or any other participation in the strike, except that they would not return to work on respondent's terms—without recognition of the Union.[23]

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in the plant engaged in similar conduct (R. 1141, 1134, 1148, 1151). Each one of these men, as well as each of the other sit-down strikers who returned to work, was not only paid by petitioner his full wages for the time he was occupying the plant, but was also given a raise upon his return, and was working for respondent at the time of the hearing (R. 1138, 1136, 1145, 1152, 1175, 926, 992, 1331–1333, 1705).

[23] Plainly the Board's conclusion that respondent had been guilty of no violation of Section 8 (3) of the Act is irrelevant. The ground for that conclusion is simply the technical one that no application for reinstatement had been made. The Board stated (R. 1961–1962):

"It might be argued that since the Union was demanding as a condition to reinstatement only something to which

So far as respondent is concerned, therefore, the reinstatement of the strikers not already reinstated will simply have the effect of obliterating the distinction which respondent itself has drawn among the strikers not according to whether they engaged in violence, or disobeyed the injunction, or were discharged, but according to whether or not they would abandon their Union—a result which accords with the express intention of the whole Act and of Section 10 (c) particularly. Respondent also urges, however, that the reinstatement is contrary to the policy of the Act in the larger view—that it will not effectuate the policies of the Act because it will encourage sit-down strikes and violence. The suggestion is rather surprising, coming as it does from one who has already afforded not only precisely the reinstatement which is required but also with back pay and raises, to those participants in the conduct it condemns who were willing to accept respondent's disregard of the Act. But irrespective of its source, the suggestion is without merit.

Congress did not intend that the conduct of employees be either approved or condemned in a pro-

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they were entitled under the Act—recognition and collective bargaining—the respondent in illegally refusing this demand should be considered as discriminatorily refusing to reinstate the strikers. We do not take this view. So long as the employees were unwilling to return to work under the conditions existing at the time the strike was called, however just the grounds on which their position was based, it cannot be said that the respondent was refusing to reinstate them.

"While the record gives rise to a reasonable speculation that the respondent would have refused to take back the

ceeding under the Act.[24] Correction and prevention of employee misconduct was intentionally left to other statutes and other tribunals, with the full realization that existing sanctions were sufficient and that the Board should not be required to pass on charges of misconduct by employees.[25] Indeed,

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strikers in a body, such a speculation, in the absence of a clear-cut request for reinstatement, cannot support a finding that the respondent refused to restore them to their jobs. We will dismiss the complaint in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act by discharging and refusing to reinstate the strikers."

[24] Misconduct by employees is, of course, a factor to be considered by the Board in exercising its judgment and discretion. The Board has held that misconduct may be such as to warrant withholding the normal reinstatement remedy. *Kentucky Firebrick Co.*, 3 N. L. R. B. 455, enforcement granted, 99 F. (2d) 89 (C. C. A. 6); *Republic Steel Corp.*, 9 N. L. R. B., No. 33, decided October 18, 1938, at p. 175. The considerations which impelled the Board to reach a contrary conclusion in the present case are fully set forth in its decision, that respondent's open defiance of the Act had precipitated the conflict as an alternative to the orderly processes of collective bargaining which the employees had attempted to pursue; and that respondent, by reinstating a large number of the sit-down strikers, had shown it did not regard the misconduct of the employees as rendering them unsuitable for employment.

[25] Compare the following statement by the Committee on Education and Labor of the Senate (Sen. Rep. No. 573, 74th Cong., 1st Sess.) in rejecting the proposal that the Board have power to prevent burdens to commerce occasioned by employee action (pp. 16–17):

"Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now

the instant case demonstrates how adequate the sanctions are against misconduct such as that here involved, and, by the same token, how unnecessary it is in this case to permit the effects of respondent's unfair labor practices to continue simply to add a further penalty. Of the 37 strikers who were held in contempt of the state court, 24 were fined $100 and sentenced to 10 days' imprisonment, 11 were fined $150 and sentenced to 120 days' imprisonment, and 2 were fined $200 and sentenced to 180 days' imprisonment (R. 1738–1761). These sentences were affirmed on appeal to the Appellate Court of Illinois for the Second District (295 Ill. App. 323) and leave to appeal to the Supreme Court of Illinois was denied on October 17, 1938. Even more severe penalties were available under the Criminal Code of Illinois had the public prosecutor deemed it desirable to invoke them.

The solution provided by Congress in the present Act for the avoidance of strikes, and the unpredictable consequences thereof, is the fostering and encouragement of collective bargaining as a means

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adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. * * * In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. * * * The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done."

This section of the report was quoted with approval by the Committee on Labor of the House of Representatives. H. Rept. 1147, 74th Cong., 1st Sess., p. 16.

for the peaceful adjustment of disputes between employers and employees. Sit-down strikes, which reached their peak in 1936 and the first part of 1937, were most frequent in newly unionized industries which had no background of collective bargaining.[26] These sit-down strikes were part of the pronounced period of industrial strife which is largely attributable to failure of employers to accept the Act prior to this Court's decision in the *Jones & Laughlin* and companion cases. Those decisions of this Court were immediately reflected in an increased resort to the Act and to the processes of collective bargaining and a corresponding sudden decline in the number of sit-down strikes. At the present time the sit-down has virtually disappeared.[27]

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[26] Lois McDonald, *Labor Problems and the American Scene* (1938), p. 491; Monthly Labor Review, August 1938, p. 362. Experience since the early part of 1937 has demonstrated that in the previously unorganized mass production industries when collective bargaining finally took place between strong international unions and employers, contracts were entered into outlawing the sit-down strike as a weapon of labor. Such contracts have been signed in the rubber, electrical, glass, tile and automobile industries. Agreements on file with the United States Bureau of Labor Statistics, Division of Industrial Relations.

[27] The number of sit-down strikes reached a total of 170 in March 1937 and there were 52 and 72 in April and May, respectively, of that year. In June, the second month after the decision in the *Jones & Laughlin* and related cases, there was a sudden drop to 29, which was followed by a steady decline until December. After that month the number of sit-down strikes in any month never exceeded 10. In August

So far as the National Labor Relations Act is concerned, the way to prevent and discourage sit-down strikes, as well as all strikes, is through collective bargaining, not by punishing strikers.[28] It flies in the very teeth of the whole policy of the Act and its constitutional basis as a regulation of commerce to contend that, faced with clear violations of the Act, the Board must withhold the only remedy which can encourage collective bargaining in this case by dissipating the effects of respondent's unfair labor practices because, after such practices were committed, some of the strikers engaged in acts illegal under state law, for which they

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1938, the last month for which figures are available, there were but 3 sit-down strikes involving 332 workers.

The decrease is even more clearly shown by a comparison with the number of strikes as a whole. In March 1937 sit-down strikes constituted 28 per cent of all strikes. In April and May the percentage decreased to 10 and 12, respectively. In June it had decreased to 5 and with the sole exception of February 1938 in which the percentage increased to 6, it has never reached higher than 5 per cent again. See Monthly Labor Review (U. S. Bureau of Labor Statistics), August 1938, pp. 360–361; November 1938, p. 1039, and compiled sit-down strike statistics of the Bureau, January to August 1938.

See also statement of Elmer F. Andrews, then Industrial Commissioner of the State of New York:

"All along, the experienced leaders, both A. F. of L. and C. I. O., have exerted their influence to promote discipline and responsibility among the minor officials and the rank and file. The sharp drop in the use of the sit-down strike method after the Supreme Court's upholding of the Wagner National Labor Relations Act indicates, to my mind, that, if labor is given an orderly method of appeal for justice, under the law, it will not resort to extra-legal methods."

have been punished under that law. The Act was not enacted as an instrument to prevent strikes other than by protecting the right to engage in genuine collective bargaining. It is not punitive in its remedies against employers (*Consolidated Edison Co.* v. *National Labor Relations Board,* Nos. 19, 25, decided December 5, 1938); nor should the framing of remedies under it be made with an eye to the penalization of employees. The normal and effective operation of the Act is the method provided by Congress for preventing consequences of the denial to employees of the rights guaranteed them in the Act. The men reinstated here were denied their rights and to effectuate the policies of the Act the order restores the situation as it was before such denial.

Finally, there can be no doubt that, as a practical matter, it is reinstatement, and that alone, which will restore to the employees their confidence in the procedure of the Act and in the processes of collec-

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Hearings before a Subcommittee of the U. S. Senate Committee of the Judiciary on S. Res. 207, 75th Congress, 3d Session, p. 114."

[28] The policy of the Act, as stated in Sec. 1, is as follows:

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred *by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.*"

tive bargaining. Unless reinstatement is ordered, even though respondent ceases all its violations of the Act, the procedure of collective bargaining will continue to be regarded by the employees as one which can be sought only at the risk of their jobs.

3. *All of the strikers were properly ordered to be offered reinstatement despite respondent's reduction of its staff during the strike and its claim that seven of the strikers are inefficient*

Respondent further objects to the reinstatement order as too broad in that it orders *all* of the strikers to be offered reinstatement. The argument, in brief, is that the Board improperly required an offer of reinstatement to be made to employees whose jobs no longer exist, or who are deemed inefficient. The Board did not, of course, require respondent to *maintain* a larger staff than it thought necessary, or workers that it thought inefficient. Its decision expressly provides (R. 1967–1968) that, upon reinstatement of the strikers, respondent—

> may reorganize or reduce its staff in any non-discriminatory fashion it deems necessary * * *.

Respondent contends, however, that the order should have directed offers of reinstatement of strikers only to the extent that positions are available upon discharge of employees first hired after the unfair labor practices occurred. That form of order was formerly used by the Board, with the

further provision that strikers for whom there were no vacancies be placed on a preferential employment list. See, e. g., *Jeffery-DeWitt Insulator Co.*, 1 N. L. R. B. 618, enforcement granted, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731. The object of a reinstatement order, however, is to restore the situation, as nearly as possible, to that which existed prior to the unfair labor practices which caused the strike. Experience demonstrated that this form of order did not restore the *status quo* as far as it is reasonably possible to do so. Contrary to the intent of Section 13 of the Act, it penalized employees for exercising the right to strike, because it gave a preferred position to the employees who remained at work, or abandoned the strike before their fellows. If the strike had not occurred, all of the employees would have been at work when the reduction in personnel occurred, and those to be eliminated would have been selected from the entire staff, not from the strikers alone.

The Board, therefore, changed the form of its orders so that the strikers would not be required to bear alone a burden which they would have shared with the non-strikers had no strike occurred. As in the present case, it now requires the reinstatement of all strikers, regardless of the number of existing vacancies, and provides that after such reinstatement the staff may be reduced on any nondiscriminatory basis. E. g., *Louisville Refining Co.*, 4 N. L. R. B. 844; *Omaha Hat Corp.*, 4 N. L.

R. B. 878. This form of order has been enforced, as modified in respects here immaterial, in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d). It is also supported by the decision in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333. There, prior to any unfair labor practice, four new employees were hired to take the place of striking employees, reducing, *pro tanto*, the number of positions available for strikers. Because of discrimination in excluding five strikers on the basis of union activity after the strike was over, the Board directed that the five be reinstated, with the right to the employer then to reduce its staff on a non-discriminatory basis. This Court, over the protest of the employer that there were no vacancies to which the reinstatements could be made, upheld the Board's order (304 U. S. at 345).

Respondent asserts that the decision in *Black Diamond S. S. Co.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579, is to the contrary. Manifestly, it is not. The Board's order there required the company to reinstate strikers "dismissing if necessary engineers employed for the first time" after the unfair labor practices. The court, citing *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731, interpreted the order as intended to effect reinstatement only to

the extent positions were vacant after the new employees were discharged. The Board did not take a contrary position in its brief, and the question here presented was not raised. Moreover, as we have pointed out, the Circuit Court of Appeals for the Second Circuit has subsequently enforced an order requiring reinstatement irrespective of existing vacancies. *National Labor Relations Board* v. *Hopwood Retinning Co., supra.*

The Board was also justified in reinstating the seven employees whom respondent claimed to be inefficient. Respondent itself had shown no intention to penalize their alleged inefficiency by the loss of their positions. Indeed, with respect to four of the seven, respondent had solicited them to return, which they refused to do without recognition of the Union (Graimer, Gartley, Johnson, Seifert, R. 82, 1074). Two others, Bissonnette and Fellens, were, as their foreman testified, among the less efficient in their respective departments (R. 1261–1263, 1270, 1277, 1281, 1285), but there is no evidence that there had been any intention to discharge them prior to the time they struck, or that others in the same rank of efficiency were also discharged. These six had never had their work criticized and all received one or more raises shortly before the strike (R. 779, 810, 798, 821, 763, 1053, 770–771). The seventh, Hoff, was a man of 74, whom respondent had replaced with a younger man (R. 1215). Again, there is no evidence that, but for the strike, the substitution would have occurred.

Respondent is, of course, under no obligation to retain any employee, and may reduce its staff after the reinstatement, on a basis of efficiency as well as of abolition of positions, whatever the situation in that regard may be when the order of the Board becomes effective. The order of reinstatement of the seven who were alleged to be inefficient simply prevents the burden of the elimination for inefficiency from falling solely on the strikers. In both respects the reinstatement order is as fair to respondent as would be one in the form for which it contends, and has the additional advantage of more nearly restoring the *status quo*. We submit that it cannot be said to constitute an abuse of discretion, and should be enforced. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.[29]

4. *The back pay provisions of the reinstatement order are entirely proper*

Respondent's final objection to the order requiring an offer of reinstatement to the strikers relates solely to that portion of the order which requires respondent to reimburse the employees to be reinstated for any losses they may suffer by reason of

[29] The opinion of the dissenting judge below states that the order should have been limited as respondent suggests (R. 1998). The opinion shows, however, that the respondent's right to eliminate unnecessary jobs after reinstatement was not fully recognized. The majority opinion did not find it necessary to pass on the matter.

its refusal of their application for reinstatement, by paying the equivalent of the wages they would have earned from such refusal to the offer of reinstatement, less sums earned elsewhere during that period (R. 1970–1971).

Respondent's objection to the back pay requirement is that it is a penalty designed to obtain compliance with the order without judicial review. On the contrary, the back pay provision is entirely remedial. But for respondent's unfair labor practices, the strikers would presumably have been at work at all times since February 17, 1937. Back pay might have been awarded from that date. The employees, however, voluntarily chose to cease work, rather than to utilize the procedure under the Act for the correction of unfair labor practices. Hence the Board awarded back pay only between the time when the individual striker manifested his desire to abandon the strike and return to work, and the date when he is finally permitted to do so. Until such desire is made manifest by application, the strikers would not be available for work and accordingly are not awarded pay for the period of the strike. After that time they would be ready for work and only respondent's failure to recognize his obligations under the Act would prevent them from earning wages.

Whether the application by the employees for reinstatement is made before or after the Board's order is irrelevant. Where, after an unfair labor practice, the strikers express their desire to return

to work on the employer's terms by applying for reinstatement prior to the Board's order, the Board may properly require back pay from the time of the employer's refusal to the time when reinstatement is granted. *Black Diamond S. S. Corp.* v. *National Labor Relations Board,* 94 F. (2d) 875, certiorari denied, 304 U. S. 579, *supra,* footnote 19. Where, as here, application for reinstatement, if it occurs at all, will be made first after the Board's order, a provision that back pay commences to accumulate at that time, unless the request is granted, is remedial, and proper under the Act. *National Labor Relations Board* v. *Oregon Worsted Co.,* 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *Biles Coleman Lumber Co.,* 98 F. (2d) 18 (C. C. A. 9th).

The payments, in other words, are equally remedial no matter whether they begin to accrue immediately after the strike or at some later date. Nor do they become a penalty because they continue to accrue while the validity of the order is litigated. This is equally true of all back pay orders, many of which have been sustained by this Court. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.,* 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.,* 301 U. S. 58; *Associated Press* v. *National Labor Relations Board,* 301 U. S. 103; *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142; *Santa*

Cruz Fruit Packing Co. v. *National Labor Relations Board*, 303 U. S. 453; *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333; *Consolidated Edison Co.* v. *National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938. If there is any penalty here, it is on the employees, because they are not awarded back pay from the time of the strike, though they ceased work because of the employer's violation of the law.

Fundamentally, respondent seeks to be permitted to exercise its right to litigate, and when it is finally determined that it has no defense, to be relieved of all obligation to make restoration for the economic idleness which it has caused. Were it appealing from a money judgment against it, there can be no doubt that it would have to pay interest pending appeal. Certainly its present position finds no support in equity. Legally it necessitates setting at naught the express authorization in Section 10 (c) that back pay may be required as a remedial measure, and the further provision in Section 10 (g) that the commencement of review or enforcement proceedings "shall not, unless specifically ordered by the court, operate as a stay of the Board's order."

We submit, therefore, that the provision of the Board's order requiring respondent to offer reinstatement to all striking employees, upon request, with back pay from the time of its refusal of any such application, is in all respects valid and proper and should be enforced.

B. THE ORDER OF THE BOARD REQUIRING RESPONDENT, UPON REQUEST, TO BARGAIN COLLECTIVELY WITH THE UNION, WAS VALID AND PROPER

Paragraph 2 (a) of the order of the Board (R. 1970) requires respondent, upon request, to bargain collectively with the Union as the exclusive representative of its employees in the unit found to be appropriate. The provision is the affirmative statement of the cease and desist portion of the order directed to the same violation contained in paragraph 1 (c) (R. 1970). It is the normal remedy in cases involving a violation of the obligation to bargain and has frequently been approved by the courts. *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515; *National Labor Relations Board* v. *Remington-Rand, Inc.,* 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, 304 U. S. 576; *Black Diamond S. S. Co.* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579; *National Labor Relations Board* v. *Hopwood Retinning Co.,* 98 F. (2d) 97 (C. C. A. 2d); *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. (2d) 146 (C. C. A. 5th); *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.,* 98 F. (2d) 18 (C. C. A. 9th).

So much, we understand, respondent does not deny. Its argument is that in this case the normal remedy should not be applied, and is footed upon the assertion that the Union lost its majority after the unfair labor practices were committed, and therefore cannot now be recognized as the exclusive representative of the employees, even though it was entitled to that status on February 17, 1937.

Actually, the facts must be considered to be to the contrary. When the other provisions of the order are enforced, 93 employees named in the complaint will be reinstated, and persons hired since the plant reopened will be discharged. In addition to these 93, all of whom are members of the Union, there are 62 members who were voluntarily reinstated by respondent after the plant reopened (R. 1204, 1339). These members did not resign from the Union upon accepting offers of reinstatement (R. 292, 477–481). Although some of them have doubtless become members of the R. M. W. A. (R. 917), that membership, influenced and coerced by respondent, as we shall show below (pp. 74–77), cannot be considered as a genuine designation of a collective bargaining agent, nor can it be expected to continue after respondent ceases to violate the law and disestablishes the R. M. W. A. Consequently, it should be disregarded in determining the propriety of this portion of the order. Certainly, the Board is entitled to assume that, except for the effect of coercive practices which will cease with the enforcement of other

portions of the order, the Union majority proved at the hearing continues. As the Circuit Court of Appeals for the Second Circuit has recognized, unless some such presumptive authority is given to the Union, "the Act will not be workable." *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869–870 (C. C. A. 2d), certiorari denied, 304 U. S. 576. See also *National Labor Relations Board* v. *Biles Coleman Lumber Co.*, 96 F. 2d) 197 (C. C. A. 9th).

Moreover, apart from its sound basis in fact, this presumptive authority is in accord with the equities of the situation. On February 17, 1937, at least 155 of respondent's employees in the appropriate unit had joined the Union (R. 188, 1004, 1338–1343, 1656–1659, 1859), and even more would probably have designated it as their collective bargaining representative had an election been held on that day. Had the Union then been accorded the recognition to which it was legally entitled, its membership might reasonably have been expected to increase. See p. 81, *infra*. If what would, then, have been probably an overwhelming majority today is, in fact, less than a majority, that result is directly attributable to respondent's violations of the Act. The Board was plainly right in concluding (R. 1968):

> To refrain from ordering respondent to bargain collectively with the Union would be to permit the respondent to profit by its own wrongdoing.

The order does not, of course, give the Union a permanent status, and was not intended to do so. Upon the present record, it must be assumed, if the Act is to be made workable, that the Union represents a majority or will do so when the effects of respondent's unfair labor practices have been dissipated by the enforcement of the other portions of the order. But if that is not true in reality—if a sufficient number of the employees have transferred permanently their allegiance from the Union, that fact will soon appear under the normal operation of Section 9 of the Act, and will terminate all effect of paragraph 2 (a) of the order.

We submit, therefore, that the order in this respect should be enforced as written, leaving any changed conditions which may be brought to the court's or the Board's attention, after enforcement, to be dealt with by the court in enforcing the decree or by the Board under the statutory provisions relating to representation. But if the Court be of the opinion that the requirement may result in according to a labor organization an exclusive recognition to which it is not entitled under the Act, the Court, without denying enforcement to the order, may remove all doubt as to its effect by adopting the procedure of the Circuit Court of Appeals for the Second Circuit in the *Remington Rand* case. That court stated that it would enforce the order, but that it would condition the liability of the employer in contempt proceedings upon the result of an in-

quiry under the Act (Section 9 (c)) after the expiration of a reasonable time, during which the effects of respondent's illegal and coercive practice might be dissipated, the election to be held only if, upon presentation of the Union's proof of a majority, there was room for a *bona fide* doubt that the proofs establish the fact.[30] We do not believe that

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[30] The opinion stated (94 F. (2d) at 869–870):

"Section I (d), insofar as it merely compels the respondent to treat with the Joint Board, is within the language of section 8 (5), 29 U. S. C. A. § 158 (5) and was plainly warranted. However, that was nearly two years ago, and it is possible that the Joint Board will no longer represent a majority of the men, even after those who struck are restored to their jobs, as later sections of the order provide. The membership of a union is constantly changing, and it may at any time cease to represent the majority; if it does, it loses its power to bargain for the unit. When the authority of the representatives is in doubt, the Board must inquire and certify under section 9 (c), 29 U. S. C. A. § 159 (c), that their authority exists, or its order will be without support in the evidence. In the case at bar we could not in any event judge of the Joint Board's continued authority until the old men are reinstated, which the Labor Board has required—lawfully as we shall show later; and even after that has been done, it will still be impossible to judge, for not only will there have been many changes in personnel, but the men may not be of the same mind. Yet the order in form requires the respondent to recognize the Joint Board indefinitely in the future, and if that really assured them of a perpetual tenure, it would be objectionable for the reasons just given. It does not. Practically, the issue will arise only when there is a new occasion for negotiation, and the Joint Board demands renewed recognition as bargaining agent of the unit. Our order must not then guaranty their power, if it shall appear that they have lost it; but yet it should give them some presumptive authority, for otherwise

upon the facts in the present case such a condition is necessary, and suggest it only as an alternative in the event that the Court disagrees. Certainly, however, if it be adopted, every objection which respondent has to the order completely disappears.

III

THE BOARD'S FINDING THAT RESPONDENT HAD VIOLATED SECTION 8 (2) IS SUPPORTED BY SUBSTANTIAL EVIDENCE, AND THOSE PORTIONS OF THE ORDER BASED UPON THAT VIOLATION SHOULD BE ENFORCED

The Board found (R. 1962–1965) that respondent had violated Section 8 (2) of the Act in that it had dominated and interfered with the formation and administration of the Rare Metal Workers of America, Local No. 1, which had come into being at respondent's plant subsequent to the strike and the resumption of operations. Although respondent contended that there was no evidence to support these findings, the court below found that they were supported by substantial evidence (R. 1987, 1993–1994). Despite that conclusion, however, the court denied enforcement to the provisions of the Board's

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the act will not be workable. They will be the last representatives; and the respondent must challenge their power for this reason in good faith, and it must invoke an inquiry by the Labor Board under section 9 (c), 29 U. S. C. A. § 159 (c), if it does not treat with them. But if it does so, we shall not treat its refusal as a contempt, until after the Labor Board has certified the result. It will not be necessary to insert this proviso in the order; it is to be understood as incorporated into it. Section I (d) of the order is valid."

order requiring respondent to cease and desist from its violations of Section 8 (2) of the Act, and to withdraw recognition from and disestablish the R. M. W. A. as a collective bargaining representative of its employees. As we have heretofore explained (pp. 21–23) in connection with respondent's violations of Section 8 (1), which the court below also found to be supported by evidence but refused to enforce, we believe that the only issue with respect to the cease and desist portions of the order is whether the finding of violation is supported by substantial evidence. We shall first address ourselves to that question. In Part B, *infra*, we shall show that the provisions of the order requiring affirmative action because of this violation of the Act should also be enforced.

A. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE BOARD'S FINDING THAT RESPONDENT DOMINATED AND INTERFERED WITH THE FORMATION AND ADMINISTRATION OF THE R. M. W. A.

The character of the R. M. W. A. cannot be properly evaluated without reference to the situation prior to and at the time of its formation. As we have seen (pp. 29–31, *supra*) respondent had, prior to the strike, vigorously sought to foster an "inside" rival to the Union. When the Union attempted to bargain on September 10, 1936, Anselm had stated that respondent's policy was against recognition of "outside" unions, and had suggested that an "inside" organization be formed. Litera-

ture favoring an employee representative plan was furnished the committee, placed on the bulletin boards, and handed to each employee by his foreman. A petition was circulated by Anselm and the foremen expressing the signers' desire for an "inside" union, and threats and insinuations were used to induce the employees to sign. Indeed, the strike itself had been caused by respondent's firm refusal to deal with an "outside" union (see pp. 36–37, *supra*).

The plant reopened soon after the eviction of the strikers (R. 1182, 1329–1331). At that time the employees who insisted on bargaining collectively through representatives of their own choosing were out on strike. Only those willing to abandon efforts to achieve Union recognition had been reinstated (pp. 50–54, *supra*).

Under such circumstances it was almost inevitable that there should emerge in place of the Union a labor organization of the type which conformed to respondent's conditions and for which respondent had repeatedly and unmistakably expressed its preference. Actually, the R. M. W. A. was organized almost immediately (R. 962–963). An "organization committee" called on Anselm and obtained his approval of an "inside" union (R. 962–963, 999, 1008, 1024–1025). The new organization was incorporated by an attorney who did not charge for his services, which were extensive (R. 938, 1002, 1323–1324). It was immediately ac-

corded the use of respondent's mimeographing machines and bulletin boards (R. 1009, 1011, 1001–1002, 1323, 919, 933, 942, 964, 970–971, 984, 985, 988–989, 999, 1009, 1326–1327). Its ballot boxes were set up in respondent's buildings and the ballots were put in respondent's vaults for safe keeping (R. 920, 934, 941, 971, 994, 966, 972, 1000–1001, 1011, 1023). It was permitted to hold meetings in respondent's buildings (R. 999, 920, 1000, 932, 963–964, 969, 973, 977, 979, 984, 988, 993). Finally, its ballots and bylaws were printed free of charge by an unidentified benefactor (R. 1323–1324).

The bylaws provided that "outsiders" could neither belong to nor represent the new organization (R. 1026–1030). Its president was an employee hired by respondent from the National Metal Trades Association.[21] Most of the other persons nominated for office were employees hired as strikebreakers when the plant reopened (R. 970, 921, 924–925). The office of secretary was occupied by a deputy sheriff's daughter whom respondent had employed in appreciation of her father's services toward eviction of the sit-downers (R. 1122, 1125–1126, 1013). The new organization was accorded recognition as exclusive bargaining representative

[21] There were but two screw machine operators in the shop (R. 145–146, 1663), of whom the president of the R. M. W. A. was one (R. 927, 1012). The record shows that the two screw machine operators remained on strike and that upon reopening the plant respondent hired two screw machine operators from the N. M. T. A. (R. 345–346).

of the employees even before it had taken any steps to select a bargaining committee or to formulate what it would ask (R. 1002–1005, 944, 1019).

The evidence thus forms a familiar pattern. It establishes that respondent conceived the idea of an "inside" union, expressed its desire in no uncertain terms to its employees, and fostered and supported the organization which arose in response to this stimulus. Plainly, it supports the Board's finding of a violation of Section 8 (2) of the Act, and requires that the cease and desist provisions of the order based upon this violation should have been enforced. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *Consolidated Edison Co.* v. *National Labor Relations Board, supra.*

B. THE PROVISIONS OF THE ORDER BASED UPON THIS VIOLATION WERE VALID AND PROPER, AND SHOULD BE ENFORCED

Respondent, however, raises additional objections to those provisions of the order requiring it to withdraw recognition from and disestablish the R. M. W. A. as the collective bargaining representative of its employees. The argument is that the Board cannot require the withdrawal of recognition of the R. M. W. A. unless that organization is structurally incapable of functioning as a truly independent representative of the employees, or unless there is proof of continuing violation of Section 8 (2). We submit that the argument is without merit.

Apart from all other considerations, this provision of the order is valid as the necessary concomitant of the other portion of the order that respondent bargain with the Union as the exclusive representative of its employees. If that order is valid, as we believe that it is (pp. 68–73, *supra*), there is no further question here. Respondent cannot be allowed to treat with the R. M. W. A. because the duty to treat with the Union—the duly selected representative of its employees—imposes "the negative duty to treat with no other." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44–45; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 871 (C. C. A. 2d), certiorari denied, 304 U. S. 576.

In addition to that fact, however, respondent plainly is in error in asserting that the critical fact is the formal structure of the Union—its constitution, its bylaws, and the like. On the contrary, we submit that whether continued recognition of the R. M. W. A. would obstruct the employees' freedom of self-organization and genuine collective bargaining is a question of fact and a matter on which the Board was entitled to exercise its "judgment and discretion in determining * * * whether the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. In fact, in *National Labor Relations Board* v. *Pacific Grey-*

hound Lines, Inc., 303 U. S. 272, this Court held it proper to order the withdrawal of recognition from an organization where employer control was not inherent in its structure. The decision recognizes that domination by the employer, and hence a continuing interference with the employees' freedom of self-organization, may exist even though it is not made inevitable by a constitution and bylaws.

Similarly, there is no need to prove continuing violations. In both the *Pennsylvania Greyhound* and *Pacific Greyhound* cases the Circuit Courts of Appeals sustained the Board's orders in so far as they required cessation of action violative of Section 8 (2), but, considering those provisions adequate, refused to enforce the additional withdrawal of recognition requirements. This Court disagreed and sustained the order in all respects, recognizing that the effects of employer interference with and domination of a labor organization normally continues long after the actual violations of Section 8 (2) have ceased.

The argument of respondent seems to be based on a fundamental misconception of the purposes of the Act. Were it merely to stop unfair labor practices, there could be no valid objection to continued recognition of a labor organization once the employer's relations with it are conformed to the law. Cease and desist orders would be adequate, affirmative action would never be necessary, and no provision for it would appear in the Act.

But that is not the purpose of the Act. The prevention of unfair labor practices is simply a means to an end—industrial peace achieved by collective bargaining through fairly chosen representatives. The statute contemplates that the Board may require not only cessation of unfair labor practices, but also affirmative action to effectuate the policies of the Act. The question is not a formal one—is the R. M. W. A. "structurally incapable" of functioning, or is there proof of continuing violations. The question is simply whether the policies of the Act can best be effectuated without an affirmative order—whether there can be a fair choice of representatives and fair collective bargaining, under all the circumstances of the case, while respondent continues to recognize the R. M. W. A. The matter is necessarily one primarily within the discretion of the Board. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Clearly, there can be no possible showing here of an abuse of that discretion.

We have shown above that recognition was the culmination of many indicia of respondent's favor and support which the R. M. W. A. received. Respondent had, on numerous occasions, unequivocally expressed its desire that the employees select an "inside" union as their bargaining representative, and, as a phase of its campaign against the Union, actively solicited support for such an organ-

ization. Those who returned to work after the strike did so in full realization that they would have to acquiesce in respondent's selection of their means of representation. Without any doubt, respondent has guided and influenced the choice of a representative.

Unless this provision of the order be enforced, the organization thus chosen for the employees by respondent has the powerful fact of recognition in its favor. Recognition is the pivotal factor in collective bargaining. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515. By conferring or withholding recognition, an employer often has power to make or break a labor organization. Employees are clearly inclined to select as their representative an organization which has achieved recognition, and therefore promises the greatest effectiveness in bargaining. Indeed, in the *Pennsylvania Greyhound* case, this Court, in discussing the purposes of Congress with respect to the affirmative relief provisions of the Act, stated (303 U. S. at p. 267):

> It had before it the *Railway Clerks* case which had emphasized the importance of union recognition in securing collective bargaining, Report of the Senate Committee on Education and Labor, S. Rept. 573, 74th Cong., 1st Sess., p. 17, and there were then available data showing that once an em-

> ployer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of employees, and hence in preventing the recognition of any other.

Moreover, it is simply contrary to reason to urge, as respondent does, that a labor organization, the formation and administration of which have been interfered with and dominated by the employer, can suddenly become a fair and independent agent when the acts of interference and domination cease. The R. M. W. A. has obtained its members and its conduct has been directed by respondent's influence. Its policies, and its officers, have been shaped by respondent's interference and with a view to respondent's approval. Above all, the attitude of the employees toward it as respondent's creature has been definitely shaped. This was recognized in *Consolidated Edison Co.* v. *National Labor Relations Board:*

> The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair labor practices. Compare *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra.*

The statement is precisely applicable here. Continued recognition of the R. M. W. A. will permit

respondent to continue to accomplish the very objects at which its violations of Section 8 (2) were directed. If employers can, merely by ceasing such violations prior to issuance of the Board's order, reap the illegal benefits of those violations, no substantial abandonment of this type of interference with freedom of self-organization and collective bargaining may be expected. Proscription of unfair labor practices cannot be effective so long as a premium attaches to their commission. Only if the Board may restore the relationship between respondent and its employees to that which would have obtained had the statute not been violated do unfair labor practices become profitless. Such restoration cannot be had so long as the R. M. W. A., created and raised to a commanding position in the plant as a result of unfair labor practices, is accorded the recognition which it would never have earned without respondent's help.

Finally, respondent contends that the order is improper because there was proof only of "support," not of "domination" or "interference." The argument is based on an erroneous premise, and is, in any event, without merit. The evidence, summarized at pp. 74–77, *supra,* established that respondent dominated and interfered with the formation and administration of the R. M. W. A., as the dissenting judge below found (R. 1994), in addition to contributing various forms of support to it. But had respondent's acts constituted no more

than "support," the Board's order is nonetheless valid. What has been said above concerning the lasting effect of violations of Section 8 (2) and their perpetuation by means of recognition is equally applicable to all kinds of violations. The decisions of the Circuit Courts of Appeals have drawn no distinction between cases where domination was achieved in other ways, and those in which employer favor and support have secured a labor organization a commanding position in the plant. In either case the Board's orders requiring withdrawal of recognition have been sustained. *National Labor Relations Board* v. *Wallace Manufacturing Co.*, 95 F. (2d) 818 (C. C. A. 4th); *National Labor Relations Board* v. *J. Freezer & Son, Inc.*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board* v. *Eagle Manufacturing Co.*, decided November 10, 1938 (C. C. A. 4th); *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th).

IV

RESPONDENT WAS NOT DEPRIVED OF DUE PROCESS OF LAW BY THE BOARD'S RULINGS ON ITS APPLICATION FOR SUBPOENAS

Certain rulings by the Board on applications by respondent for subpoenas are asserted to have deprived it of the fair hearing guaranteed by the Fifth Amendment and the National Labor Rela-

tions Act. We submit that the Board's rulings were proper, and that, in any event, petitioner was not prejudiced in any way.

The basis of respondent's contention is really very limited, as a brief statement of the facts will show. On June 3, 1937, concurrently with filing its answer to the complaint, respondent made written application for the issuance of subpoenas requiring the attendance at the hearing of the 93 persons named in the complaint, 34 persons who had participated in the sit-down strike and violence and had thereafter been reinstated, and Robert E. Pilkington, a conciliator of the United States Department of Labor, and for a subpoena *duces tecum* directed to the Union requiring the production of certain records (R. 83–86). Putting to one side for the moment the request for the subpoena *duces tecum* and that directed to Pilkington, respondent's application was fully satisfied during the hearings. On June 10, 1938, the Board denied respondent's application without prejudice to a renewal thereof upon the completion of the Board's case, stating (R. 88–89) that it appeared—

> that many of the matters desired to be proven by the witnesses sought to be subpoenaed will be offered in evidence as part of the complainant's affirmative case.

This ruling was well within the discretion of the Board concerning the conduct of the hearing. *Philadelphia & Trenton R. Co.* v. *Stimpson,* 14 Pet.

448, 463; *Cox* v. *Hart*, 145 U. S. 376, 380–381; *Fidelity & Deposit Co.* v. *L. Bucki & Son Lumber Co.*, 189 U. S. 135, 143; *Franklin* v. *South Carolina*, 218 U. S. 161, 168. Its wisdom is demonstrated by the fact that the Board called as witnesses 85 of the 93 persons named in the complaint, and assured respondent that they could at any time be recalled (R. 584). Respondent's counsel thereafter stated that its application for subpoenas for these 85 persons had been fully satisfied (R. 1043).

At the close of the Board's case on Friday, June 18, respondent orally renewed its application for subpoenas. Ruling was reserved by the Trial Examiner until the next hearing day, Monday, June 21. On that day the application was continued under advisement (R. 1088, 1344) in order to determine the effect on the application of a stipulation which had that day been signed (R. 1779–1803). The stipulation set forth that the second group of 34 persons for whom subpoenas had been asked had participated in the seizure and occupation of the buildings and were thereafter reinstated (R. 1784). The Trial Examiner on Tuesday, June 22, asked respondent's counsel to file a written application for such subpoenas as he then desired (R. 1344–1347). On June 23, no written renewal has yet been filed and another oral renewal was made, but when respondent's counsel was asked by the Trial Examiner about the effect of the stipulation, he stated that respondent still desired the

duces tecum and the subpoena for Pilkington (R. 1344). The statement was meant, and understood, to be an agreement that the stipulation had removed the necessity for the other persons. If there can be doubt as to that, it is removed by the fact that when later that day respondent filed a written renewal of its application of June 3 with the Trial Examiner, it requested only the *duces tecum* and the subpoena directed to Pilkington (R. 89–91).

Thus respondent's application was fully satisfied with the exception of these two particulars. We shall examine them separately.

1. Respondent's renewal of its application for a *duces tecum* on June 23 (R. 89–91) was immediately submitted to the Board for consideration, pursuant to Section 11 (1) of the Act and Article II, Section 21 of the Board's Rules and Regulations, Series 1, as amended (R. 1565–1566, 1359). No word had been received from the Board by 3:15 P. M. June 24, when respondent concluded its case. By agreement of all parties respondent rested with leave to renew its case if subpoenas were granted. The Board did not offer any rebuttal and the hearing closed subject to the agreement (R. 1551–1552). A few minutes after the close of the hearing word was received from the Board by telephone that the application had been granted in so far as it asked the subpoena for Pilkington and a *duces tecum* requiring production of the membership records (R. 91, 1553–1554). The hearing was immediately

reconvened, the subpoenas were handed to respondent, and all records relating to membership in the Union were tendered to counsel (R. 1553–1554). Respondent objected that the subpoenas did not cover all of the Union records, that Pilkington was not then within the county, and that the subpoenas had been issued too late (R. 1555–1559). The Trial Examiner then offered respondent as much time as was necessary to examine the records and to serve Pilkington (R. 1559). Respondent, however, rejected the offer of further hearings and refused to examine the records or make use of the Pilkington subpoena (R. 1559–1560).[32] The Trial Examiner thereupon closed the hearing.

It is in the light of these facts that respondent's claim of prejudice must be judged. In view of them, and of the reasons advanced by respondent for desiring the materials sought, it is plain that there was no prejudice whatever.

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[32] The day before respondent's counsel had announced at the hearing that "Subject to testimony to be adduced by the witnesses and documents asked for in the application, we are ready to rest respondent's case. We do not want to make an offer of proof in connection with those items, if there is any chance of getting the subpoenas, and getting the materials * * *" (R. 1360). The record does not disclose the occurrence of any event which supports respondent's claim, upon receipt of the subpoenas, that it was then too late to use them (R. 1558). Respondent apparently refused the subpoenas and the proffered records because the Board had limited the scope of the subpoena *duces tecum* and respondent saw no utility in adducing further proof with regard to the membership of the Union.

Respondent's original application stated (R. 85) that it desired the production of the Union's—

> minute books, books of account, check books, membership cards, books and lists, and all correspondence relating to the solicitation of members among employees of the respondent or relating to the participation of said Lodge 66 or any of its officers, members, or agents, in the seizure on February 17, 1937, of Buildings 3 and 5 of respondent's plant and the retention thereof or maintenance of persons in occupancy of said buildings until February 26, 1937.

In its second application (R. 89–90) it renewed that request, and asked, in addition, the production of—

> all copies of charters, by-laws, articles of association, rules of eligibility, and any and all other rules and regulations governing the organization and conduct of said Lodge 66.

The first purpose for which these records were desired, as set forth in respondent's applications, was to meet the allegations of the complaint that the Union represented a majority of the production and maintenance employees (R. 90, 85). Production for that purpose was plainly unnecessary. During the hearing the membership cards had been produced, submitted to respondent for examination, and counsel had stipulated that the names on the cards conformed to employment records of persons employed by respondent between September 10,

1936, and February 17, 1937 (R. 307–311, 1063, 1338–1343). In addition, when the hearing was reopened on June 25, the Union produced, pursuant to the Board's subpoena, "such records as the Union has relating to the membership" (R. 1554), which respondent refused to examine or use.

The second stated purpose for which the Union's records were desired was to prove whether the seizure and retention of the plant "was a common enterprise of all of the members" of the Union, and whether the Union financed and directed these actions (R. 90, 85–86). Respondent apparently assumes that if a conspiracy were proved, every member of the Union, even those who took no part in the strike activities, technically would be "criminals" and not entitled to be reinstated. We submit that the element of conspiracy is totally irrelevant to any issue in the proceeding. Further, if the question were of any moment, any additional proof on whether seizure and retention of the plant was a common enterprise would be merely cumulative. The facts concerning the seizure had been the subject of a detailed stipulation (R. 1780–1785), and it had been proved without contradiction that the seizure and retention of the plant was planned and directed by the Union's bargaining committee, pursuant to authority voted it at a Union meeting to take whatever steps were necessary to obtain collective bargaining (*supra*, p. 36). There could be no question, on the record made, that the Union

had authorized and supported the sit-down strike.

The third stated purpose for which respondent desired production of the Union's records was to refute testimony adduced "with respect to the eligibility rules of said Lodge 66, its organization and existence as an alleged labor organization * * *" (R. 90). Here, too, evidence adduced upon these subjects could be cumulative only. The evidence was overwhelming that the Union admitted to membership all employees of respondent, except supervisory, clerical, laboratory, and engineering employees (R. 174, 179, 181, 182, 186, 189, 191, 193, 196, 197). The absence of written rules had been testified to (R. 245), and even if they had existed, they were irrelevant to any issue in the case. Respondent did not at any point of the hearing contend that the bargaining unit should be more inclusive than that claimed to be appropriate by the Board. As to whether the union was a "labor organization," respondent's own witnesses had testified that the Union attempted to bargain collectively with respondent on behalf of the employees. This circumstance fully established the status of the Union as a labor organization under Section 2 (5) of the Act. No evidence that could be produced under the subpoena could alter this proved fact.

We submit that the Board did not abuse its discretion in confining the subpoena *duces tecum* to requiring the production of membership records. The inference is strong that, in requesting the pro-

duction of various confidential records of the Union, respondent simply contemplated what the Trial Examiner termed a "fishing expedition" (R. 1566), without real cause to believe that the records would be of aid in preparation or proof of its case. No proper cause was shown for granting the respondent a right to go into the minute records, books of accounts, check books, and correspondence of a labor organization to which it was bitterly hostile.

2. As we have shown, respondent's request for a subpoena for Pilkington was granted on June 24, but respondent refused to use it (pp. 87–88, *supra*). On such facts, it seems perfectly clear that if there was any prejudice, it can be ascribed only to the refusal of respondent's counsel to accept the Trial Examiner's offer to adjourn the hearing until Pilkington could be served. But it is clear that respondent was not prejudiced in fact. In its original application on June 3 (R. 85) respondent stated that Pilkington's testimony was desired to prove—

> the forcible retention of possession of buildings forming part of respondent's plant * * * and other violence and threatened violence accompanying the alleged strike * * *.

The retention of the buildings and the violence were proved in detail by other witnesses, and were further elaborated in the stipulation of ~~July~~ June 21.

Consequently, in its application of June 23 (R. 90), respondent stated that the only proof it wanted from Pilkington was of "threats of violence against respondent and its officers" by persons named in the complaint. However, no officer of respondent who testified mentioned any threats against them or respondent, nor did any of the other witnesses. The sole mention of threats anywhere in the record is in these applications for subpoenas. Had any threats actually occurred, proof would seem to have been readily available to respondent from either the officers, the employees, or both.

For these reasons, we believe that there was plainly no prejudice to respondent. But even if there were, the complete answer to its contention that it was deprived of due process of law is that the Act afforded it a full remedy which it did not pursue. Under Section 10 (e) and (f) respondent could have applied to the Circuit Court of Appeals for leave to adduce whatever material evidence it had been denied an opportunity to elicit by reason of the Board's action. It did not avail itself of this remedy, and, consequently, has no ground for complaint here. *Consolidated Edison Co.* v. *National Labor Relations Board,* Nos. 19, 25, decided December 5, 1938.

CONCLUSION

Wherefore, the decision of the court below should be reversed, and the cause remanded with instruc-

tions to grant enforcement to the order of the Board.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES A. HORSKY,
Special Attorney.

CHARLES FAHY,
General Counsel,

ROBERT B. WATTS,
Assistant General Counsel,

LAURENCE A. KNAPP,

MORTIMER B. WOLF,

RUTH WEYAND,
Attorneys,
National Labor Relations Board.

DECEMBER 1938.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

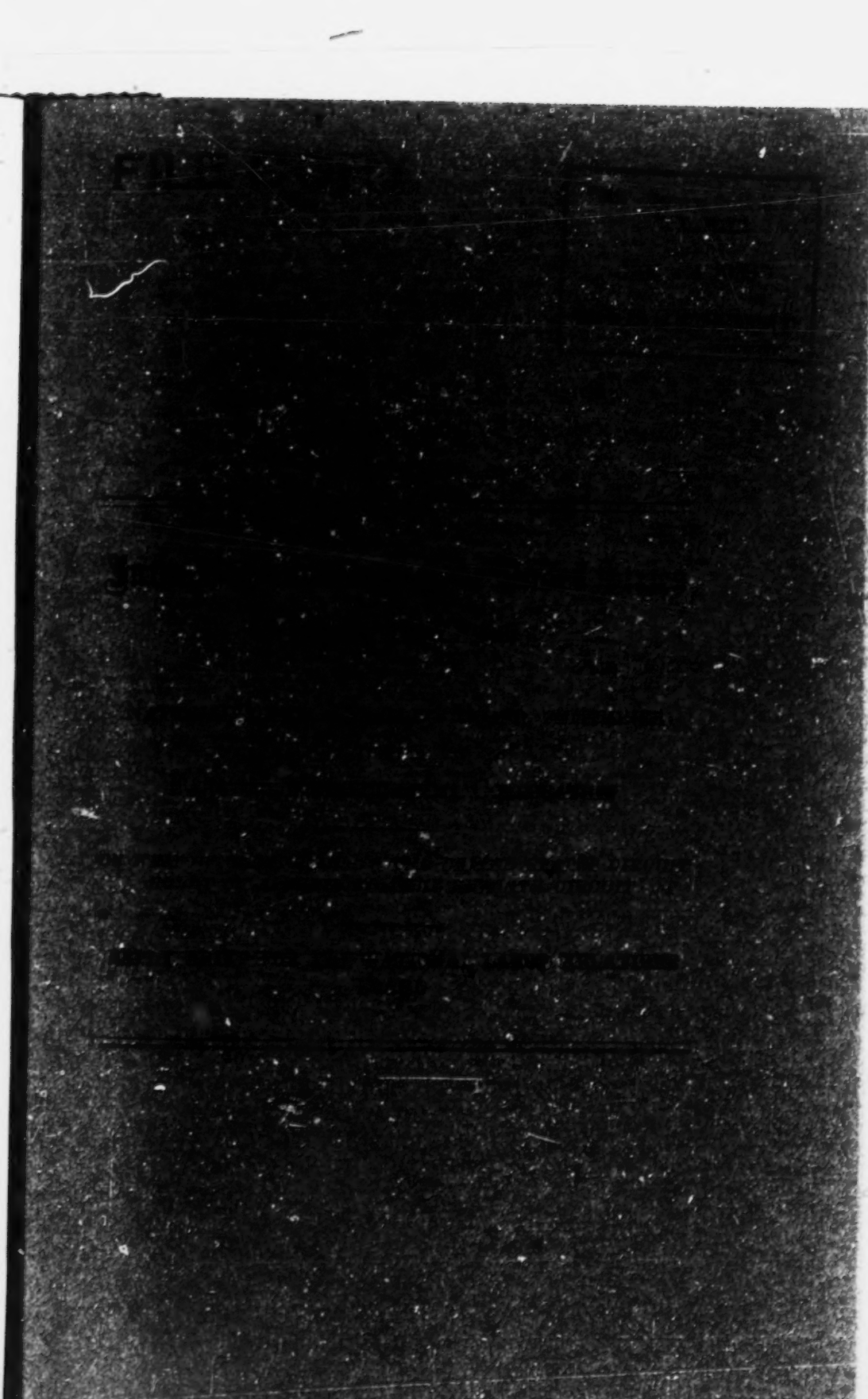
* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *.

* * * * * *

(f) * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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120021—39——1

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 436

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FANSTEEL METALLURGICAL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

I

FURTHER STATEMENT OF THE FACTS MADE IN THE LIGHT OF RESPONDENT'S BRIEF

1. Respondent asserts (brief, p. 2) that "The proceedings * * * grew out of the forcible seizure of respondent's plant in a so-called 'sit-down' strike." The source of the proceeding is, as the statute requires, the unfair labor practices committed by respondent during the six months preceding the strike. The strike succeeded these

violations of the law and is relevant only to the appropriateness of the affirmative relief required by the Board. Respondent cavalierly ignores its open defiance of the law in maintaining that the order should be set aside. Thus, it dismisses the hiring of Alfred Johnstone on August 17, 1936, and the labor espionage carried on through him during the succeeding four months (petitioner's main brief, pp. 23–27) with the statement that "the man in question * * * in no way participated in any of the matters in controversy before the Board" (brief, p. 3). But this unfair labor practice was set forth in the charge filed by the Union (R. 33), was alleged in the complaint issued by the Board (R. 27), and was found by the Board to have been committed (R. 1952–1955).[1] Entirely ignored

[1] Respondent's characterization of Johnstone's reports as "general plant recommendations" (brief, p. 3) cannot avoid the fact that they were instruments of industrial espionage. Not only did some of them contain information concerning the Union, but even the improvements recommended were those which the Union had discussed requesting of respondent. By receiving these secret reports, respondent was able to appear to its employees as having itself decided to improve conditions without Union prompting. This is, of course, a familiar tactic used by employers to thwart unionization by convincing the employees that it is unnecessary. Each of the following suggestions for plant improvements which Aitchison attributed to Johnstone's reports was a demand which had been formulated or discussed by the Union: installation of hot water in washrooms, better ventilation, cool water in drinking fountains, improved dust extraction, isolation of carbon jobs, isolation and screening of torch welding jobs (R. 364–365, 1634, 1655).

in respondent's brief is the Board's finding, supported by uncontradicted evidence, that from early November until a short time before the strike respondent isolated the Union president from the other employees (R. 438–443, 274). The injection of a provocateur and spy into the ranks of the employees and the maneuver whereby respondent deprived the Union members of contact with their leader are among the unfair labor practices which the Board's order was designed to remedy. It was only after months of provocation by these flagrant violations of the law, among others, that the employees engaged in the conduct which respondent presents as the whole of the case.

2. In similar fashion respondent treats as insignificant its campaign to obtain acceptance by its employees of an employee representation plan, characterizing the incident as a suggestion not authorized by the respondent's officers and hinting that the men were never led to believe that the company favored the plan (brief, pp. 2–3). But the undisputed evidence shows, as the Board found (R. 1948–1951, 1964), a vigorous campaign conducted by the superintendent and foremen to coerce the employees into abandoning the Union and adopting in its stead an inside union. The plant superintendent admitted his responsibility for the campaign and testified that he caused copies of the proposed representation plan to be mimeographed and distributed to each employee in interoffice com-

munication envelopes (R. 1350–1352, 1358, 1635–1643, 1646–1655, 259–260, 284, 316–317, 326, 430–435, 889, 896–897). Company union literature was posted on bulletin boards throughout the plant. The superintendent himself, with the assistance of foremen, during working hours, circulated the petitions for adherence to the employee representation plan among the employees, and obtained their signatures by threats that the employee "had better sign this if he thought anything of his job" (R. 867, 869, 871, 880, 884, 886–889, 911–913). Some of the strong Union men refused to sign (R. 413, 423, 430, 433, 436, 891–893, 896–897); some signed because they "were scared" (R. 888). Such abuse of economic power carried on throughout a plant by an entire supervisory force cannot be waved aside with unsupported statements that the employees "were given no assurance the plan would be acceptable to the company" or that the "suggestion" was made "without authority from the respondent's officers" (respondent's brief, pp. 2–3). A private conversation between respondent's president and superintendent in which the former told the latter to drop the campaign can hardly be said to have dissipated the campaign's coercive effects. The employees had been impressed with respondent's desire to have an inside union, and this desire bore fruit after the strength of the Union had been broken. Respondent has never seriously argued that this conduct was not an unfair labor practice nor that respondent was not responsible therefor.

3. Respondent's brief likewise fails to mention the unfair labor practices consisting of respondent's usurpation of authority to dictate who might serve on its employees' representation committees and of respondent's outright refusal to recognize an "outside" union (petitioner's main brief, pp. 27–34). Respondent confuses the issue by suggesting that the men were trying to obtain a closed shop and check-off (brief, pp. 2, 38) and that the Union membership had been obtained by coercion and intimidation (brief, pp. 4, 49). The record establishes beyond dispute that respondent's refusal to recognize or deal with the Union was not based upon any objection to the demands advanced by the Union nor upon any question as to whether the Union was the freely chosen representative of the employees; the sole and freely expressed basis for such refusal was respondent's determination not to recognize any labor organization with national affiliations (petitioner's main brief, pp. 27–34). In any event, the closed shop provisions contained in the tentative draft of an agreement presented on September 10 were at once abandoned when respondent objected to them; a new contract without these terms was drawn, and at no time subsequent to September 10 did the Union renew its demand for a closed shop (R. 211, 213, 261–262, 264–265, 286–287, 1654–1655). Nor is there any evidence in the record to the effect that any Union members were caused to join by coercion or intimidation; in fact, there is no evidence that any

person was in any way solicited to become a member by threats or other improper means.[2] Respondent did not elicit from a single one of the approximately 90 Union members who testified at the hearing any questionable circumstance in connection with his joining. Not a single other witness was called whose testimony supports the allegations now made concerning the Union's coercive organizing methods. The record is not only devoid of any evidence to support respondent's charge, but presents as a whole a picture of self-organization among employees, many of whom had worked side by side at respondent's plant for about a quarter of a century, of such a nature as to negative any impropriety in the solicitation of memberships.[3]

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[2] Respondent's brief (pp. 4, 49) cites for its assertions in this regard the decree of the state court in the contempt proceeding (R. 1765). This decree makes no findings that any specific person or persons were so coerced or intimidated but contains mere general findings. The Board was not a party to the contempt suit and the findings there made in no way bind the Board.

[3] The unionization at respondent's plant began among employees who had worked at the plant for 15 to 25 years who were dissatisfied over the way respondent ignored their length of service in its change of methods and pay resulting from the introduction of efficiency experts (R. 171–181, 313–320, 323, 412, 651). After determining to form a union and deciding upon the national organization with which they desired to affiliate, the men sought out an organizer of that national organization (R. 220–221). While this organizer gave the men some assistance by furnishing them membership cards, explaining how to conduct meetings, etc., the organizing and conduct of the Union were essentially carried on by these employees of long service without the assistance of "outsiders" (R. 171–181, 184–185, 220–225, 236, 312–323, 1361–1367, 1383–1386).

4. Neither does the record sustain respondent's assertion (brief, p. 4) that "deliberate, provocative slowdowns were organized." The only record reference cited by respondent fails to support the statement. The witness, a foreman hired about the middle of November and entirely inexperienced in the type of work he was supervising (R. 1304–1311), testified that he was trying to introduce the "speed up" (R. 1311) and while his testimony at most indicates opposition to the speed up, a fairer interpretation would be that his methods were different from those the men were accustomed to and occasioned some friction (R. 1302–1303, 1308–1311, 400–403). Responsible Union leaders testified that no slowdown was organized (R. 321–323, 400–403). If there had been a deliberate slowdown, it cannot excuse respondent's defiance of the Act.

5. The evidence concerning the crucial meetings of February 17 is misstated by respondent. The testimony shows that no outside organizer was in any way involved in these meetings, contrary to respondent's assertion that at these meetings "the Plant Superintendent denied a request that he confer with their outside organizer" (brief, p. 4). What occurred is that a committee of the Union composed solely of respondent's own employees endeavored to obtain a meeting with respondent's president, who refused to confer with them (R. 257, 270, 271, 288–289). Anselm, the plant superintendent, who acted as respondent's representative at these meetings, placed the refusal to confer

squarely upon the ground that respondent would not recognize an "outside" union (R. 257–258, 288–289), the same position which respondent had so often frankly and unqualifiedly reiterated to its employees.

6. It was only as a direct result of these unfair labor practices that the employees went on strike. Without seeking in any way to justify the conduct of the employees which occurred during the strike, it should be pointed out that respondent has, throughout its brief, greatly exaggerated the events. When the strike began the Union members suggested that the foremen, women, and other employees who did not want to participate in the sit-down leave the buildings (R. 732, 737, 748, 762, 772, 779–783, 786, 794–796, 802–803, 806–807, 824, 953, 1047, 1130). The strike began in an orderly fashion without violence of any sort. Laboratory employees were permitted to return to the laboratory for the purpose of continuing their work (R. 275). During the entire strike the strikers inflicted no damage upon the machinery. The Board's finding that there was no sabotage (R. 1967) is sustained by the testimony of respondent's president that there was no injury to the machinery except some external rust and neglect (R. 1195–1196, 1336–1337). When questioned as to whether respondent discovered any deliberate destruction or vandalism he replied "We found very little serious trouble with the machinery" (R. 1196). There is no other testimony in the record of any injury to the machinery

except by rust. The only injuries to the buildings occurred during the two encounters with the deputies. The only extensive damage shown by the evidence was the breaking of windows when the deputies shot bombs and projectiles of tear and emetic gas into the plant and the strikers broke additional window panes (R. 584, 1105, 1115–1116, 1128, 1133, 1137, 1144, 1151, 1174). The strikers did throw tools and supplies and directed water and fire extinguisher streams at the deputies (as testified to by four of these same strikers who did these things and who were reinstated by the company on its terms). The figure of $62,000 damages given by respondent (brief, pp. 10, 46) represents, according to the testimony of respondent's president, a cost of $10,000 to $12,000 to repair the buildings and machinery and restore the inventory (R. 1180–1181), a loss of $20,000 in fixed charges and overhead expenses during the period the plant was not in full operation (1181–1182) and a loss of $30,000 of prospective profits from business which respondent had hoped to receive but did not (R. 1181–1182). The items of $20,000 and $30,000 were not attributable to the sit-down character of the strike. There was no evidence in the record to sustain these estimates of the amount of damages aside from Aitchison's assertion.[4]

[4] The strikers showed numerous instances of care for the property. A striker finished certain chemical processes requiring 4 hours' work after the strike began so that no loss

Although some of the strikers suffered severe injuries from being struck by gas bombs and from the effects of the gas (R. 751, 948–949) only three or four of the deputies received injuries and the record discloses that even these injuries were trivial (R. 1117, 1120–1121, 1336–1337). The sulphuric acid repeatedly referred to by respondent's brief was not in fact sulphuric acid, but rather a mixture composed of oil, ferrosulphate and some diluted sulphuric acid, and called "special electroloid" (R. 1107). Some of the pictures of the "missiles" referred to in respondent's brief (p. 6) give a misleading view because of enlargement or lack of indication of the relative size of the "missiles." The pictures in Respondent Exhibits Nos. 28–29 (R. 1837–1841) give an accurate view of their size.

7. Respondent states that upon reopening the plant "reemployment was affirmatively refused to certain of the men" and that "it accepted applications for reemployment only from those believed to have been coerced and intimidated into remaining within the buildings" (brief, pp. 10, 48). This is directly contrary to the testimony of respondent's president that respondent "took back as many

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would result (R. 733–734). Equipment was carefully placed away so that it would not be injured (R. 1419). In order to protect the machinery from the fog and mist after the windows were broken, the strikers patched the windows as best they could, wrapped machinery in water proof paper, and oiled the machinery to prevent rust (R. 1412–1414, 1419, 1425–1426). The strikers repaired pipes which broke from freezing when respondent turned off the heat (R. 1411–1415, 1419).

people as would come back" (R. 346). It is inconsistent with the testimony of respondent's superintendent that every man who applied for reinstatement during the period of restaffing was taken back without condition or limitation except two employees, aged 76 and 74 years, respectively, who were not reinstated solely because of their age (R. 1216) and that the only explanation he could give as to why some people who were in the sit-down were reinstated and others were not was that the latter would not have taken their jobs if offered (R. 1255). Finally, it conflicts with the position taken in respondent's exceptions to the intermediate report; there respondent stated that "such of the men who were discharged for the plant seizure on February 17, 1937 who filed application for reemployment were rehired by Respondent without condition or limitation" (R. 1910). Respondent's witnesses all emphasized that no distinctions were made in reinstating persons. Respondent made no effort to determine which of the strikers had been active in the resistance to the deputies and which had not: all who were willing to come back were reinstated. Respondent's assertion that "in no case did" reinstatement "extend to men who were thereafter sentenced for contempt by the Circuit Court of Lake County" (brief, p. 10) ignores the obvious fact that the reinstatements occurred in March, the sentencing for contempt in June, and that, while respondent had reinstated approximately half of those attached for contempt, only those who refused to re-

turn to work received sentences (petitioner's main brief, pp. 10, 51–54).

8. Respondent states that as to those who did not themselves engage in the sit-down but merely brought food and clothing, respondent "declined to recognize these men as employees and to reinstate them, upon the express ground that they had participated in that common criminal undertaking" (brief, p. 21). This entirely untrue. Respondent's president and superintendent testified at the hearing that all who applied were reinstated, that the only reason some did not return to work was their determination to remain on strike (*supra*). Moreover, respondent in its pleadings claimed that it individually solicited at least four of these persons to return to work but that they refused to do so (Otto Lantz, Mondro, Raynor, and Evelyn Graimer, R. 76, 81–82, 1074, 1923). The strikers who merely supplied the sit-down strikers with living necessities were not in the building at the time of the discharge, which in terms was limited to the occupants. No attempt was made to discharge anyone who did not take part in the sit-down but merely rendered assistance to the sit-down strikers.

9. Respondent asserts that the Board's brief supports its statement of respondent's active solicitation of sit-down strikers to return by references to mere talks between the strikers and their "brothers, apprentices, and other unauthorized persons" (brief, p. 51). In no instance was such solicitation cited except as to persons whom respondent alleged in its answer, amended answer, motion to dismiss,

and exceptions to the intermediate report that it had so solicited (R. 76, 81–82, 1074, 1923). In these pleadings respondent lists 22 of the 93 persons named in the complaint as persons whom it had solicited and who had refused to return to work, among them 15 or 16 sit-down strikers (petitioner's main brief, pp. 50–51). Respondent claimed to have taken back at least 37 sit-down strikers (R. 1216) and explained that the restaffing had been accomplished by foremen visiting such men as they needed for the operation of their department (R. 1213). The witnesses who had been rehired told of visits by foremen and others soliciting their return (R. 992, 1166, 922–923), as also did strikers who refused to return (R. 447, 449, 452–454, 661, 563, 572–574, 586, 731–735). Contrary to the position now taken in its brief, respondent attempted to prove at the hearing that certain of the employees knew they could return and would be reinstated but refused to abandon the strike (R. 734–735, 799, 809–820, 822, 910).

10. Respondent takes exception (brief, pp. 10–11, 15–16, 49, 51) to the Board's statements that only those who abandoned the Union and their efforts to secure collective bargaining through it, were reinstated (petitioner's main brief, pp. 17, 50, 51, 75). The charge (R. 33) and the complaint (R. 29–30) alleged that respondent refused to reinstate certain of the strikers because of their union activities. However, respondent took the position at the hearing, and its president and superintendent testified,

that all employees who were willing to return, with the exception of four whose exclusion was explained on peculiar personal reasons, were reinstated, that those not reinstated were still on strike and would not have returned if offered reinstatement, that many of the strikers had been asked to return and refused (R. 346, 1215–1216, 1255, 1910, 1923). A great many of the strikers testified they were still on strike at the time of the hearing and were at all times unwilling to return without Union recognition (R. 528, 562, 570–571, 594–595, 609, 613, 629–630, 650, 734–735, 757, 768, 775–777, 789, 798–799, 805, 816, 818–822, 902, 907, 910, 1038, 1040, 452–453, 460, 546, 554–555, 557–558, 560, 567, 572–575, 578, 581, 587, 590, 592, 597, 599, 602, 604, 611, 618, 622, 624, 625, 633, 642, 643, 661, 729, 740–741, 746, 750, 781–782, 910).

The Board, therefore, dismissed the charges and complaint insofar as they alleged that persons had been refused reinstatement on a discriminatory basis (R. 1961–1962, 1971). It did, however, find that by sending individual emissaries to the strikers to solicit their return to work, while it continued to refuse to recognize the Union, respondent engaged in unfair labor practices within the meaning of Section 8 (1).[5]

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[5] Due to the omission of a line of print between lines 23 and 24 on printed record page 1962 the sentence containing this finding is not completely set forth in the printed record. The sentence should read: "By the foregoing actions, as well as by going over the heads of the Union leaders and appealing to individual strikers to return to work, the respondent engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act." See 5 N. L. R. B. 930, 946.

It is obvious that all strikers who went back under such circumstances were in fact abandoning or suspending their effort to obtain recognition of the Union. Respondent's solicitation of their individual return under the circumstances was a solicitation of return without Union recognition and in abandonment of the Union. It is submitted that the Board's argument that in this manner a line has been drawn between those who were tenacious in their insistence that respondent obey the Act and those willing under the economic pressures of the situation to abandon these rights, which the Board order obliterates in the interests of effectuating the policies of the Act, is proper.

11. Respondent asserts that "neither in its decision nor the brief does the Board manifest an understanding of the nature of the reorganization. Here was no mere reduction in the number of employees doing the same work in the same department—three entire departments were eliminated" (brief, p. 53). Respondent claims that the jobs formerly occupied by 39 employees were "completely abolished" and that they had not been reinstated for that reason (petitioner's main brief, pp. 11, 52–56, 79–81). This is inaccurate. Respondent's president and superintendent each testified that seniority rules were observed in the plant so that when work was slack or jobs abolished old employees were transferred to other jobs before new persons were hired (R. 141, 1254). This system was applied to the reorganization in question inso-

far as the employees who abandoned the strike were concerned (R. 1185–1186, 1197–1198, 1208–1211, 1214–1215, 1254, 1829). No person who returned to work before the restaffing was completed, and only one who attempted to come back later, was refused a job because the department in which he had worked before the strike was abolished. A job in some other department was found for each of those who returned (R. 1185–1186, 1197–1198, 1214–1215, 1254). Many of the employees ordered reinstated had, during their long service at the plant, worked in various of the departments (R. 462, 900, 184, 593, 412). Of those whose jobs respondent claims to have abolished (brief, pp. 79–81) at least 9, according to respondent's pleadings and according to the proof in the case, were actively solicited to return (Clarence Dreyer, Lindberg, Luke, Moxey, Schuman, Wells, Raynor, Vivienne Johnson, Seifert, R. 76, 81–82, 831, 907–910, 1074, 1923). The jobs of Aigner and Hoff, the aged employees, were not in fact abolished but given to a new employee (R. 1215, 1297–1300). Many of the men to whom respondent would have this Court excuse it from offering reinstatement, on the basis of the supposed abolition of their jobs, have served respondent long years.[6] There is no way of knowing whether the jobs of these men would exist at the time of the

[6] Fulkerson, Sr., 22 years (R. 628); Moxey, 21 years (R. 906); Fagan, 20 years (R. 412); Anderson, off and on since 1921 (R. 648); Clarence Dreyer, 17 years (R. 540); Harold Dreyer, 10 years (R. 486); Phil Graimer, 18 years (R. 685); Oscar Johnson, 18 years (R. 642); Holm, Sr., 19 years (R.

reinstatement or whether there would be other jobs they could be given. The Union in its exceptions to the intermediate report alleged the reestablishment of part of the jobs (R. 1941–1943).

12. Numerous other misstatements, inaccuracies, and omissions occur throughout respondent's brief. Since they are apparent from an examination of the record references cited in support of the statements or from the facts found by the Board and supported by the evidence, no further enumeration will here be made.

II

RESPONDENT HAS NOT SHOWN THAT THE ALLEGED DISCHARGE BARS REINSTATEMENT

In answer to the Board's argument (petitioner's main brief, pp. 40–45) that a discharge after the occurrence of unfair labor practices does not terminate the employee status for purposes of Section 10 (c) of the Act, respondent states that the sole intent of Congress expressed in the statutory definition of "employee" is that workers should not, merely by going on strike, lose the rights guaranteed employees in the Act. Other portions of the committee report than that quoted by respondent (brief, p. 24) give further purposes of Section 2 (3) (petitioner's brief, note 16, pp. 41–42). The portion quoted does not purport to constitute an exhaustive description of the purposes of that section.

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467); Holm, Jr., 10 years (R. 544); Yaeger, 14 years (R. 611); Praski, 18 years (R. 636); Petraitis, 14 years (R. 753); Bunton, 11 years (R. 531); Brunke, 14 years (R. 527); Anderson, 17 years (R. 631); Aigner, 11 years (R. 614).

Respondent has not pointed out any right which the construction of the statute urged by the Board gives the employees here involved which is an addition to those possessed by employees at work (see *infra*, p. 26).

Respondent cites in support of its position *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4th). In that case the employer did not violate the statute prior to the strike which occurred. Nor did the case involve any question whether discharge for cause terminated the Board's power to require reinstatement. The court sustained the Board's findings that at the conclusion of the strike the employer refused to reinstate a number of the strikers by reason of their union activities and enforced the reinstatement order as to all but four persons. Those persons, the court thought on the evidence, had obtained regular and substantially equivalent employment before the Board's hearing, although the Board had made no finding on that whatever. Since Section 2 (3) expressly provides for termination of the prior employee status when such new employment is obtained, the court held that they were not employees of the company at the time of the Board's order. On rehearing, the case was remanded to the Board for the purpose of passing upon the equivalence of the employment obtained. 97 F. (2d) 959. The court's decision, therefore, relied on the very provision of Section 2 (3)—that the employee status ends when equivalent employment is obtained—which we have advanced (peti-

tioner's main brief, p. 41) as strong evidence that if Congress had intended the statutory employee status to be terminated in other ways it would have so stated.

Respondent also relies upon *Standard Lime & Stone Co.* v. *National Labor Relations Board,* 97 F. (2d) 531 (C. C. A. 4th). In that case the employees went on strike on April 24, 1935, prior to the effective date of the Act. On June 11 the company informed the strikers that any who did not report for work two days later would be discharged. Thereafter, but prior to the occurrence of any unfair labor practices, some of the employees engaged in various acts of violence. On July 15, after the effective date of the Act, the employer refused to bargain collectively with the union, upon the ground that the strikers who failed to return to work in accordance with the announcement of June 11 were no longer its employees. The court agreed with the Board's finding that the June 11 announcement did not sever the employment relation, but construed the refusal to bargain on July 15 as a discharge of those employees who were guilty of violence. Since the union did not represent a majority of the employees unless these men were counted in determining the representation, the court held that the employer had not violated the law and set aside the Board's order.

We think the decision unsound. The court erroneously construed the refusal to bargain as a "discharge," although the express basis of that

refusal was the June 11 announcement, which preceded the violence, applied to *all* those who thereafter remained on strike, and which the court held ineffective to terminate the employment relation. But even were the decision correct, it would not help respondent. There both the cause for the "discharge" and the "discharge" itself occurred prior to the commission of any unfair labor practices. In the present case, as we have pointed out *supra*, respondent violated the law before cause for discharge arose and before any discharge was attempted.

Both the *Mooresville* and *Standard Lime & Stone* cases, therefore, lacked all the elements we think significant in this case. It is apparent that the question to which respondent addresses its argument—whether strikers who are discharged for cause prior to the occurrence of unfair labor practices remain "employees" within the meaning of Section (10 (c)—is not pertinent here. The sole question at bar, in so far as the power of the Board to require the "reinstatement of employees" (Section 10 (c)) is concerned, is whether an employer may, after violating the Act, by discharge eliminate some of its employees from the class of persons whose reinstatement may be required by the Board to correct the violation, if such reinstatement will effectuate the policies of the Act. The Board's position on that question is set forth at pages 40–45 of petitioner's main brief. We

there argued that, once an unfair labor practice has occurred, the employer may not by discharge terminate the employee status for purposes of Section 10 (c) of the Act. Consequently, we contended, the employees retained that status at the time of the Board's order and were within the Board's power to require the reinstatement of employees.

But even if, as respondent urges, discharge terminates the employee status for purposes of Section 10 (c) at the time when it is effected, respondent is not aided thereby. In order to give effect to the purposes for which the power to require affirmative action was vested in the Board—to restore the situation to what it was before the law was violated—the term "employees," as used in Section 10 (c), if it be construed not to include employees so discharged, should be construed to refer to the status of the persons ordered reinstated at the time when the unfair labor practices occurred. At that time the Board's remedial powers, including reinstatement, attach subject to the condition that at the time of their exercise the action ordered must effectuate the policies of the Act. The violation of the law itself fixes the class of persons whose reinstatement may thereafter be ordered if such action will further the Act's policies. A discharge thereafter cannot retroactively remove individuals from this class. Clearly, it will not always effectuate the policies

of the Act to reinstate persons who were employees at the time of the unfair labor practices and were thereafter discharged for cause. But in so far as the question of power is concerned the situation which Congress intended to be re-created—that obtaining prior to the unfair labor practices—should control. It is not disputed that the persons ordered reinstated in this case were employees on and before February 17, 1937, when the unfair labor practices which are the grounds for their reinstatement were committed by respondent.

In our main brief we pointed out (note 18, p. 43) that it was not necessary, in passing upon the construction of the statute there advanced, to consider whether an employer's obligation to bargain with the representatives of his employees pursuant to Section 8 (5) of the Act continues after their discharge. That question is equally irrelevant under the present alternative argument. The standard of time determinative of employee status for purposes of Section 8 (5) may be the time of the request to bargain, a standard entirely irrelevant to employee status for purposes of Section 10 (c). The order of the Board in the present case, in so far as it requires respondent to cease violating Section 8 (5), is fully supported by respondent's refusal to bargain on February 17, 1937. Respondent does not question that at that time the persons employed by it were entitled to bargain collectively as employees.

III

REINSTATEMENT OF EMPLOYEES IN THE CIRCUMSTANCES HERE INVOLVED DOES NOT VIOLATE THE FIFTH AMENDMENT

Respondent's argument that, if construed to sustain the enforcement of that portion of the Board's order requiring reinstatement, the Act would violate the Fifth Amendment, ignores the nature of the construction of the Act which is involved. Respondent would have it appear (brief, pp. 32–34) that its right of discharge is placed under severe restrictions for purposes which do not further the policies of the Act. We think the contention to be entirely without basis.

Respondent proceeds upon the assumption that the Board in this case has construed the Act to find a "legislative prohibition" broader than the mere "legislative prohibition of the exercise by the employer of his right of discharge for the purpose of striking down the employees' right of organization," to quote respondent's brief, p. 33. But the Board did not find any discharge by respondent to have been an unfair labor practice. No question is therefore presented as to what discharges other than those whose prohibition has already been sustained in the *Jones & Laughlin* and companion cases, Congress could constitutionally prohibit. The o ıestion here is solely whether the Constitution bars Congress, as a remedy for violations of its valid prohibitions, from interfering with the nor-

mal rights of an employer to select its employees or to discharge them. This Court answered this question in the *Jones & Laughlin* case, 301 U. S. 1, at pp. 48–49, when it said:

> Reinstatement of the employee and payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement.

The essence of respondent's argument is that reinstatement of an employee is only constitutional in cases where the violation of the statute for which it is imposed as a remedy is a discharge. However, reinstatement is just as appropriate to remedy other violations of the Act. See *Remington Rand, Inc.* v. *National Labor Relations Board,* 94 F. (2d) 862 (C. C. A. 2d) *certiorari denied,* 304 U. S. 576; *Black Diamond S. S. Corp.* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d), *certiorari denied,* 304 U. S. 579; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), *certiorari denied,* 302 U. S. 731; *Carlisle Lumber Co.* v. *National Labor Relations Board,* 94 F. (2d) 138 (C. C. A. 9th), *certiorari denied,* 304 U. S. 575; *National Labor Relations Board* v. *Oregon Worsted Co.,* 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *Biles Coleman Lumber Co.,* 98 F. (2d) 18 (C. C. A. 9th). Of course, wherever, after an unfair labor practice and as a remedy for it, an employer is required to reinstate employees, often necessitating the dismissal of other employees, the employer's

normal right to select and to discharge employees is interfered with. However, it is in the nature of remedies for wrongs that those required to right their violation of law are subjected to restrictions which would not be imposed upon them in the absence of their dereliction. In such instances the only constitutional question is whether the remedy is appropriate to the wrong, not whether it restricts rights which would have existed but for the wrong.

The Board's contention that employees who cease work as a result of a labor dispute or because of unfair labor practices, remain employees for the purposes of Section 10 (c) despite occurrences intervening between the cessation of work and the Board's order (petitioner's main brief, pp. 40–45), is sustained as constitutional in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, at p. 347, where this Court said:

> The plain meaning of the Act is that if men strike in connection with a current labor dispute their action is not to be construed as a renunciation of the employment relation and they remain employees for the remedial purposes specified in the Act. We have held that, in the exercise of the commerce power, Congress may impose upon contractual relationships reasonable regulations calculated to protect commerce against threatened industrial strife. *National Labor Relations Board* v. *Jones & Laughlin Steel Corpora-*

> *tion,* 301 U. S. 1, 48. The Board's order there sustained required the reinstatement of discharged employes. The requirement interfered with the freedom of contract which the employer would have enjoyed except for the mandate of the statute. The provision of the Act continuing the relationship of employer and employe in the case of a strike as a consequence of, or in connection with, a current labor dispute is a regulation of the same sort and within the principle of our decision.

There is no infringement upon the employer's normal right of discharge by a construction of the Act that involves the continuance after an unfair labor practice of employees in a "statutory status" for the purposes of Section 10 (c). The employer's inability to decrease the group of persons eligible for reinstatement under the Act does not in itself deprive him of the right to exclude the employees from all the normal incidents of the employment relationship. Determination of the eligibility of persons for consideration as possible subjects for remedial action by a governmental agency vested with power to effectuate the purposes of a public statute is clearly not an incident of the employment relationship. Any limitation upon the employer's normal right to select or discharge his employees is first effected when the reinstatement power is exercised. It consists of a requirement that, despite the employer's exclusion of the employee from the normal incidents of the employ-

ment relationship, those incidents must be reestablished because of the previous unfair labor practices. The limitation is the same whether the source of the power is deemed to be that the discharged persons remain "employees" for purposes of Section 10 (c) or that the Act authorizes the Board to require the reinstatement of former employees.

Prerequisite to imposition of the limitation, however, is a finding by the Board, subject to the approval of the courts, that it will effectuate the policies of the Act--that is, protect interstate commerce from the injuries occasioned by industrial strife "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" (Section 1). Limitation of the right of discharge may thus be effected only for the very purpose which, respondent concedes (brief, pp. 33–34), furnishes proper constitutional basis for the restriction.

In many cases facts occurring between the date of the unfair labor practice and the date of the Board's order may render reinstatement of given employees inappropriate to effectuate the policies of the Act. A discharge for cause where it evidences a genuine determination by an employer that the employee is unsuitable for continued employment, aside from his union activities, may

usually be such a fact. However, the facts of the instant case, including the disregard by the employer of any disqualification on account of the sit-down and resistance of the deputies, in connection with the reinstatement of all those who would abandon the strike at the time respondent reopened its plant, and the persistent and continued flagrant violation of the Act by respondent causing the strike, led the Board to determine that reinstatement in these circumstances would effectuate the policies of the Act.

Where, as we think is the case here, the Board in determining a remedy for prior unfair labor practices, properly finds that reinstatement of discharged persons is necessary to effectuate the policies of the Act, the constitutionality of the resulting limitation upon the right of discharge is controlled by the decisions of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases. In those cases this Court held that Congress may impose reasonable restriction upon the right of discharge so long as such restriction is conducive to the protection of commerce against industrial strife. That the Board's orders reinstating employees discharged for union membership or activity interfered with the right of discharge which the employer would have enjoyed apart from the statute did not preclude Congress from imposing this proper sanction "for the enforcement of its valid regulation" (301 U. S. at p. 48). The limitation placed upon respondent's right of discharge in the

instant case is for the same purpose as the restriction upheld in the *Jones & Laughlin* case, since it must effectuate the policies of the Act to be authorized by the statute. Both are equally necessary to protect the free flow of commerce by securing the rights of self-organization and collective bargaining guaranteed in the Act. There is no difference in kind between the two limitations; whatever difference there is in degree is of scant significance since under the statute a discharge for good cause will normally preclude any determination that reinstatement will effectuate the policies of the Act.

IV

ANSWER TO RESPONDENT'S ARGUMENT AS TO THE RARE METAL WORKERS OF AMERICA

Respondent argues that the R. M. W. A. was improperly found by the Board to have been dominated, interfered with, and supported in violation of Section 8 (2) because "employees who refused to join were not threatened, disciplined, discharged, or even approached by any member of the supervisory staff" (brief, p. 66), because the material support given the Union was not of great value, and because the difference in attitude evidenced by respondent towards the independent union was merely a result of its observance of the Act after its constitutionality was sustained (brief, pp. 64–72). But respondent fails to answer the most basic element upon which the Board made its findings as to the R. M. W. A. The Board's determination proceeded primarily on the fact that the 6 months of

overt hostility by respondent towards outside unions, always coupled with a suggestion that the employees set up an employee representation plan or shop union, left the employees with no alternative, if they desired any representation, but an independent inside union such as the R. M. W. A. (R. 1962–1965). The numerous acts of encouragement which respondent exhibited towards the R. M. W. A. when added to the fact that the outside union of the employees' own choice had been driven from the plant by respondent's unfair labor practices, present a complete picture of the new union as one of respondent's choice rather than one of the employees' free molding.

The employees had been desirous of securing the advantages of collective representation and organization. This is amply shown by the 6 months' struggle for the organization and recognition of the Union preceding the strike. These desires the respondent, by its whole course of conduct, fettered and circumscribed. It repeatedly told the employees and carried out its statements in terms the employees well understood, that it would not deal with an "outside" organization. It, at the same time, told the employees it would gladly deal with an "inside" organization. The superintendent and foremen even put on a vigorous and coercive campaign to establish an "inside" union.

The rapid, vigorous growth of the R. M. W. A., after the reopening of the plant in March, can only be attributed to the respondent's acts in diverting and confining the desires of its employees into and

within the channel of an "inside" union. Where an employer thus limits its employees to a particular form of labor organization and upon such limitation being imposed, a labor organization of the prescribed pattern springs into being, such an organization, in the absence of any showing to the contrary, must be presumed to reflect, in that respect, the will of the employer. Such an organization is not the result of a free choice, but one whose formation has been interfered with and dominated by the employer, within the meaning of the Act.

The continuance of recognition by an employer of such an organization can but serve to defeat self-organization and obstruct the exercise by the employees of a free choice of collective bargaining representative.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.
CHARLES A. HORSKY,
Special Attorney.

CHARLES FAHY,
General Counsel,
ROBERT B. WATTS,
Associate General Counsel,
LAURENCE A. KNAPP,
MORTIMER B. WOLF,
RUTH WEYAND,
Attorneys,
National Labor Relations Board.

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In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FANSTEEL METALLURGICAL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 436

NATIONAL LABOR RELATIONS BOARD, PETITIONER

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FANSTEEL METALLURGICAL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

During the course of the oral argument herein on January 13, 1939, the Honorable Chief Justice inquired of counsel for the Board whether it was the Board's position that there was no conduct, no matter how illegal, which would justify discharge of an employee following an unfair labor practice by the employer.

The word "employee" is given a special meaning by Section 2 (3) of the Act, which is in nowise coextensive with the common-law definition.[1] Conse-

[1] See *Remington Rand, Inc.*, v. *National Labor Relations Board*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, 304

quently, the power of the Board to order reinstatement pursuant to Section 10 (c) depends not upon whether the employer has terminated the normal incidents of the employer-employee relationship but upon whether the persons reinstated are within the category termed "employees" for the purposes of the Act.

That this must be so is evident from the fact of what constitutes in law cause for discharge Discharge may be for any cause, however trivial, for example, violation of local regulations governing picketing—indeed for no cause at all—as well as for serious offenses The very nature of the power to discharge makes it a completely inappropriate criterion for the exercise of the Board's remedial power under the Act, and there is no warrant for the assumption that Congress intended that these remedial powers should be destroyed and frustrated on any such basis.

The criterion which is proper for reinstatement, therefore, is not discharge or illegal conduct, but whether reinstatement would effectuate the policies

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U. S. 576; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *Carlisle Lumber Co.* v. *National Labor Relations Board*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board* v. *Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th).

of the Act. Whether a discharge for illegal acts committed in the course of a strike induced by unfair labor practices should prevent reinstatement is a matter to be determined by applying that policy with the further limitation that under the Constitution it may not be arbitrary, unreasonable, or capricious. There are undoubtedly many situations in which reinstatement under such circumstances would not be proper Here, however, it was.

The Honorable Mr. Justice Stone inquired of counsel for the Board whether after complying with the Board's order by reinstating the employees the employer may then discharge them for illegal conduct occurring during the course of the strike.

Where reinstatement has been had pursuant to the power of the Board and the exercise thereof in a sound discretion to effectuate the policies of the Act by restoring the situation as it would have existed but for the employer's unfair labor practices, to the end that the employees may then with that full liberty granted them by the Act, the denial of which caused the strike, exercise the rights of self-organization and collective bargaining, the employer cannot, solely because of illegal conduct arising from and in connection with the strike brought about by the employer's unfair labor practices, discharge the employees after such reinstatement. Reinstatement contemplates restoration and continuity of relationship between the employer and employees which normally would have occurred un-

der the Act had the unfair labor practices not been engaged in.[2] Furthermore, under the facts of this case governing those previously reinstated in contrast with all those found by the Board entitled to be reinstated, the Board could not assume that reinstatement would be futile.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JANUARY 1939.

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[2] If the discharge is predicated upon a cause arising during the strike but still existent and operative after the strike, the employer could discharge. Thus, in one case recently decided by the Board, *Matter of Planters Manufacturing Company, Inc. and United Veneer Box and Barrel Workers Union, C. I. O.*, 10 N. L. R. B., No. 61, where certain employees were found to have been discharged for union activity at a time when they suffered a disease which apparently had not prevented them from working, the Board, in ordering reinstatement, nevertheless, provided:

"It appears from the record that some of the above persons to whom we have directed that an offer of reinstatement be made, may now be suffering from an illness rendering them unfit for work. Nothing in our Order shall be interpreted as preventing the respondent from taking steps appropriate to the situation, provided only, that in so doing no unfair labor practices be committed."

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1938

No. 436

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FANSTEEL METALLURGICAL CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

BENJAMIN V. BECKER,
MAX SWIREN,
DON M. PEEBLES,
BEN W. HEINEMAN,
SIDNEY H. BLOCK,
Counsel for Fansteel Metallurgical Corporation, Respondent.

CHICAGO LAW PRINTING CO., 111 N. WACKER DRIVE (COR. WASHINGTON ST.) TEL. FRANKLIN 0931

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IN THE

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

A restatement of the essential facts is made necessary by inaccuracies and omissions of the Petitioner.

The proceedings before the National Labor Relations Board (herein called the "Board") grew out of the forcible seizure of Respondent's plant in a so-called "sit-down" strike. Upon the refusal of the men to surrender possession, they were promptly discharged for the seizure and retention of the buildings (R. 1781, 1766). An injunctional order to vacate the premises was openly defied and on two occasions the Sheriff's efforts to enforce the court writs were repulsed with violence. The forcible re-

tention of the plant continued from February 17 to February 26, 1937, when the Sheriff effected an eviction through the use of tear gas (R. 1782, 1783).

The sit-down strikers were members of Lodge 66, which was organized in the summer of 1936 under the leadership of the Steel Workers Organizing Committee (R. 184-5). A contract presented by Lodge 66 on September 10th was rejected by the Plant Superintendent because of its closed shop, check-off system and recognition provisions (R. 204, 212, 260-1). Under the mistaken impression that an appointment had been arranged, the Lodge 66 committee again called on the Plant Superintendent (Anselm) on September 21st, this time accompanied by its organizer. Anselm insisted that no appointment had been made, and thereupon the committee apologized for the intrusion and withdrew (R. 256, 285-6; 317).

Charges that the Respondent had failed to bargain collectively were then filed with the Board. These charges, heard during the present proceeding, were dismissed. The Board's decision holds that neither on September 10th nor September 21st did Lodge 66 represent a majority of the production and maintenance employees (R. 1956).*

---

*The Board found that just prior to the September meetings Respondent had employed an undercover agent to engage in espionage against Lodge 66. The record discloses that the man in question completely severed his relationship with the Respondent at the end of November, 1936, almost three months prior to the plant seizure, and in no way participated in the matters in controversy before the Board (R. 379, 360-1, 365). It further appears from the Board's own stipulation that not a single employee was either discharged or disciplined for union membership or activity either as a result of the alleged espionage or otherwise (R. 1593). Throughout the period, officers and leaders of Lodge 66 participated in pay raises without discrimination (R. 365).

No further meetings were held or requested until February 17, 1937 (R. 287). In two meetings held that day with a large committee of Lodge 66, the Plant Superintendent declined their request that he confer with their outside organizer (R. 257-8; 298).

Within a half hour after the conclusion of the second conference and without notice or warning to the Respondent, about one hundred men forcibly seized Buildings 3 and 5, key buildings of the plant (R. 1762, *et seq.* 1780). Foremen and other employees were compelled to leave, with the warning that they had better do so "peaceably," and the buildings were then locked and barricaded from the inside (R. 1130). The seizure effected a complete stoppage in the operation of the entire plant (R. 1762, *et seq.*, 1780).

About four hours after the plant seizure, the Plant Superintendent and counsel for the Respondent sought entrance into the buildings and demanded surrender of possession. Upon refusal of the men to leave, and acting upon orders of the President, they announced in loud tones that all of the men remaining within the buildings were discharged for the violent seizure and retention of the premises (R. 1780-1). All the parties stipulated before the Trial Examiner that, at the time of the discharge of the men in Buildings 3 and 5, their number, their identity and their union affiliations, if any, with eight or ten exceptions, were totally unknown to the Respondent or anyone connected with its management, and that the discharge was a blanket discharge of all of the men then in occupation of the buildings (R. 1781).*

---

*Throughout the Petition the contention is urged that the sit-down strikers were never actually discharged. The discharge was alleged in the sworn charge filed by Lodge 66 and in the Board's complaint and was admitted in the

The next morning the Respondent filed a complaint for an injunction in the Circuit Court of Lake County, Illinois. After full hearing at which counsel for Lodge 66 and the individual defendants appeared and were heard, the Circuit Court entered a mandatory injunction directing that the buildings be vacated and possession restored to the Respondent (R. 1780-1, 1763-4). Upon being served with the injunction by the Sheriff, the men refused to comply and announced their intention to hold the buildings (R. 1782, 1767-8).

The Circuit Court then issued a writ of attachment directing the Sheriff to arrest the men remaining in the buildings and bring them before the Court to show cause why they should not be held in contempt. On the morning of February 19th, the Sheriff, accompanied by about one hundred deputies, attempted to enforce the writ of attachment. Upon being served with copies of the writ, the men refused to come out. Thereupon, the deputies attempted to force an entrance into Building 5. With axes and battering rams they succeeded in breaking down one door, only to be met by pressure streams of fire extinguishing chemicals fed from huge tanks and directed by the men on the inside (R. 1807, 1769; 1089; 1124-1133). At the same time, the men on the upper floors of both buildings began bombarding the Sheriff and his deputies with large quantities of sulphuric acid and heavy steel and iron mis-

---

answer. The discharge was also acknowledged by all parties in a stipulation of fact. The sole issue was whether the discharge was for good cause. The Board dismissed the portion of the complaint alleging discharge for union membership or activity. The Circuit Court of Appeals held that the fact of discharge for proper cause could not be open to question, and, indeed, there is *no* evidence to the contrary. For a complete statement of the record, see *infra* pp. 22-24.

siles, including pipes, bolts, nuts, reamers, wire reels and sharp end tools. The sulphuric acid was particularly terrifying as it was poured from windows and hurled in quart bottle containers at the Sheriff's men below (R. 1815, 1090; 1092). A number of deputies were burned by the sulphuric acid and other deputies were injured by the heavy flying missiles (R. 1120-1; 1771). To protect his men, the Sheriff withdrew and employed tear gas in an effort to dislodge the occupants of the buildings. That served only to increase the intensity of the acid and missile barrage, and the Sheriff and his deputies were compelled to withdraw (R. 1770).

The sit-down strikers continued their occupancy of the buildings until the morning of February 26th.* That morning the Sheriff and his deputies again attempted to enter the buildings. A more violent counterpart of the first resistance then ensued. Tools, reels and other heavy missiles, intermingled with quart bottles of sulphuric acid, were again hurled from the windows at the law enforcement officers (R. 1771). It was stipulated that the Sheriff was then compelled to use tear and emetic gas in order to evict the occupants and restore possession of the buildings to the Respondent (R. 1783).

Sixty-six of the men named in the complaint were admittedly participants in the violent seizure and retention of the plant and appear to have had full knowledge of the injunction.† It was stipulated that fourteen of the men

*During this interval they were amply supplied from the outside with food, clothing, beds, bedding, stoves, radios, home equipment and supplies (R. 1784-5, 1821).

†The writ of injunction and the writ of attachment had been read to the men through open windows and a large number of copies were passed into the buildings, and twice

named in the complaint, knowing of the injunction, procured and delivered the food, equipment and other supplies mentioned, for the express purpose of enabling the occupants of the buildings to retain their possession (R. 1784-5).

Thirty-seven of the sit-down strikers were convicted of contempt by the Circuit Court and were fined and sentenced to jail. Twenty-four received $100.00 fines and 10-day sentences, eleven received $150.00 fines and 120-day sentences, and two received $300.00 fines and 180-day sentences. The hearings with respect to the baiance of the men were continued by the Court on its own motion (R. 1738-61).* An appeal from the contempt sentences resulted in an affirmance by the Appellate Court of Illinois for the Second District (295 Ill. App. 323). The Supreme Court of Illinois denied leave to appeal on October 17, 1938, rendering the contempt order final.

A large and direct loss was inflicted upon the Respondent by the men participating in the plant seizure and in the violent resistance to the Sheriff. Most of the windows and much of the sash had been broken to obtain air for combating gas and to provide openings for the missiles thrown at the Sheriff's men (R. 1823-7, 1179, 1091). Other parts of the building interiors were damaged. Further physical destruction included the loss of numerous small

---

daily there were delivered to both buildings Chicago and Waukegan papers prominently displaying accounts of the occupation of the plant, the injunction and the unsuccessful efforts of the Sheriff toward enforcement.

*A full hearing on the merits of the case then ensued and a final decree embodying full findings of fact was thereupon entered, without objection by counsel for the defendants, and no appeal has ever been prosecuted therefrom (R. 1762).

tools and parts, many of which had been hurled through the windows, large quantities of sulphuric acid, 50,000 valuable contact points, and other inventory materials dropped from the windows on the deputies, two furnaces which were permitted to cool rapidly and burn out, general building damage occasioned by foamite and other chemicals in the fire extinguishers, the ruin of a large Niagara shear sprayed with foamite, and other physical injury occasioned by the use of the buildings for living quarters (R. 1095, 1099, 1123, 1180, 1817-28). Machinery rusted and was otherwise damaged by exposure and lack of care. The President of the Respondent, whose testimony was uncontradicted, computed its direct loss to aggregate $62,000.00 (R. 1181-2).

In announcing the reopening of the plant after ten days of repair and rehabilitation work, the President of the Respondent issued the following public statement:

> "All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the eighty men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for reemployment from such men will receive favorable consideration.
>
> "We cannot condone the defiance of the courts or the resistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant" (R. 1336).

Twelve of the men who had voluntarily left or escaped from the buildings before the eviction, and twenty-three who remained throughout the period, filed applications for reemployment and were hired (R. 1772, 1784). Such

reemployment did not extend to men who were thereafter sentenced for contempt by the Circuit Court. Many old employees returned and empty places were filled by new applicants. Sixty-one men and women who returned to work were members of Lodge 66 and they were reinstated without any condition as to union membership or activity (R. 1212-13, 1339).

With the resumption of operations came plant changes in the interest of more economical operation. As a result of this internal reorganization, numerous jobs were completely abolished and others were materially altered, effecting substantial savings (R. 1182-92). Many of the jobs so eliminated had previously been occupied by persons named in the complaint and ordered reinstated by the Board (R. 1829, 1831, 1291, 1298-9).

About the middle of April, 1937, an independent labor organization came into being at the plant (R. 963). Hourly production employees joined together to create the Rare Metal Workers of America, Local No. 1 (R. 1020-2). Supervisory employees were excluded from membership and did not participate either in the organization of the Union or the management of its affairs (R. 1003, 1020-2). Because the Respondent permitted the new organization to hold its two initial meetings in a company building and to mimeograph notices on its machines and post them on the bulletin boards, the Board held that the Respondent had supported and dominated the organization.* All of the evidence showed the organization free from management

*The evidence showed that the organizing committee had sought to rent, but had been refused the use of, public halls in the community by reason of fear of bombing or other violence (R. 977, 979). Because of that fact, the committee asked for and received permission to use an unoccupied floor of a company building.

domination (R. 954, 920, 921, 955-7, 985, 989, 990; 1018, 1020). While the Circuit Court of Appeals said that there was substantial evidence to sustain the finding of support (as distinguished from domination), the order of disestablishment was set aside.

Respondent's Contentions.

With reference to the grounds for certiorari alleged by the Petitioner, the contentions of the Respondent are as follows:

I.

A. The Court below sustained the Respondent's discharge of sixty-six employees for forcibly seizing and retaining the Respondent's plant. This decision gave effect to the prior determination by this Court that "the act permits the discharge for any reason other than union activity or agitation for collective bargaining with employees." *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. The fundamental principle having been established by this Court, no new or "vital" question is presented for review.

B. The facts, the reasoning and the decision in *National Labor Relations Board* v. *Columbian Enameling & Stamping Co., Inc.*, 96 F. (2d) 948, are totally unrelated to those of the case at bar. The *Columbian* case was neither relied upon nor cited in any of the three opinions in the Circuit Court of Appeals. The affirmance or reversal of the *Columbian* case will neither control nor affect the decision in the case at bar.

II.

The decision below is in full accord with the Fourth Circuit Court of Appeals decision in *Standard Lime &*

Stone Co. v. *National Labor Relations Board,* 97 F. (2d) 531, and the Fifth Circuit Court of Appeals decision in *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board,* 98 F. (2d) 411. In both the Second and Ninth Circuit cases cited in the petition, there were express findings of discharge for union activity. Those cases do not conflict with the decision in this case, predicated as it is upon a discharge for admittedly good cause.

III.

The order of the Circuit Court of Appeals gives effect to both the provisions and objectives of the National Labor Relations Act. The Court's finding of a discharge of sit-down strikers and a valid refusal of reinstatement to other employees for the reason that their jobs were abolished or that they were shown to be inefficient involved questions of fact and not statutory construction. On the remaining questions raised under Point III of the petition, the order of the court below is in complete harmony with the views expressed by other Circuit Courts of Appeals and by this Court.

ARGUMENT.

I.

No new or "vital" question is presented for review by the order sustaining the discharge of sixty-six employees for the forcible seizure and retention of Respondent's plant. The fundamental principle that the Wagner Act permits discharge for good cause has heretofore been established by this Court.

> "The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees. * * * The petitioner [employer] is at liberty, whenever occasion may arise, to exercise its undoubted right to sever his relationship for any cause that seems to it proper save only as a punishment for, or discouragement of, such activities as the act declares permissible." *Associated Press* v. *National Labor Relations Board,* 301 U. S. 103, 132.

> "The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* 301 U. S. 1, 45, 46.

Thus, twice, in the course of comprehensive analyses of the scope of the entire Act, did this court uphold the funda-

mental right of discharge. While the discharge of striking employees was not there specifically in issue, the reservation to the employer of the basic right of discharge for proper cause was emphasized by this Court to demonstrate that the statute was confined to proper constitutional limits. The implication was left that an invasion of that right would contravene the Fifth Amendment to the Constitution of the United States. Indeed, it is clear from *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, 349, that an employer's right of discharge for cause totally unrelated to the purposes of the legislation could not be constitutionally abridged.

In the face of these decisions, Petitioner insists that an employee who ceases work by reason of a labor dispute or an unfair labor practice acquires immunity from discharge for any cause. Reliance is had on Section 2(3) of the Act providing that the term "employee" shall include "* * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice * * *." The Senate Committee Report discloses that this provision was designed to recognize the "principle that men do not *lose* the right to be considered as employees for the purposes of this bill merely by collectively refraining from work during the course of a labor controversy."* The purpose of this provision was to secure strikers in their status as employees—not to provide them with a cloak of immunity from discharge for proper cause.† There is no

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*Rept. No. 573, Senate Committee on Education and Labor, 74th Cong., First Sess., p. 6.

†To show a contrary Congressional intent, Petitioner cites the proposal by a witness before the Senate Committee, during its hearings, that the definition of employee exclude strikers guilty of violence (Pet. p. 17). That un-

Congressional intent that ceasing work in connection with a labor dispute shall confer a license for plant seizure, violence or other acts ordinarily constituting legitimate grounds for discharge. The position of an employee ceasing work in connection with a labor dispute or as a consequence of an unfair labor practice is no different—no better and no worse—than that of his brother who remains at work. Both remain subject to discharge for proper cause—which, in the words of this Court, means "any reason other than union activity or agitation for collective bargaining."

Giving effect to the "undoubted right" of the employer, declared by this Court, the Court below sustained the Respondent in its discharge of sixty-six men for forcibly seizing and withholding its plant. This right of discharge is the paramount issue to review which certiorari is sought. The decision of the Circuit Court of Appeals applies the principle established by this Court. A redeclaration is unnecessary.

Unmentioned by the Petitioner are the discussions of the right of discharge in the *Associated Press* and

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authorized statements of witnesses at Congressional hearings have no probative value in determining the Congressional intent has been held by this Court in *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 493, reversing 42 F. (2d) 408, 411, 412. What is in point is the fact that the Congress had before it decisions of the old Labor Board, headed by Senator Wagner, the author of the present Act, holding that violence or lawlessness during a strike bars reinstatement of employees.

In re National Lock Company, No. 52, Dec. Feb. 21, 1934.

In re American Stores, No. 239, Dec. June 29, 1934.

In re Eagle Rubber Company, No. 219, Dec. May 16, 1934.

Jones & Laughlin cases and the express holding of the Fourth Circuit Court of Appeals that striking employees are subject to discharge for good cause. See *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531 (certiorari not applied for). Instead, the Petitioner seeks to ride into this Court on the coat tails of *National Labor Relations Board* v. *Columbian Enameling & Stamping Co., Inc.*, No. 229, in which certiorari has heretofore been granted. Not only is there a complete diversity of facts, issues and underlying doctrines in the two cases, but the *Columbian* opinion was neither considered, nor even mentioned, in any of the three opinions filed in the Circuit Court of Appeals in this case.

In the *Columbian* case, the Circuit Court of Appeals held that, by striking in violation of their contract, the employees terminated their employment relationship and were "estopped" to claim reinstatement. Our crucial question—namely, the employer's right to discharge striking employees on legitimate grounds—was not there remotely involved. There was no discharge in the *Columbian* case either, for proper cause as in this case, or for any other cause. The *Columbian* case was concerned solely with the legal effect of a strike undertaken in alleged violation of a contract. That case held that going on strike in the face of a prohibitory contract automatically destroyed the employee status, notwithstanding the express statutory provision that a strike, itself, shall not sever the employment. In the case at bar, the Court assumed that, upon ceasing work, the sit-down strikers continued as employees, but held that such status could be, and was, terminated upon the same legitimate grounds as would warrant the dismissal of a working employee.

Apart from the total dissimilarity in facts and holdings, the opinions in the present case and those in the

Columbian case reflect a wide divergence of approach. Judge Evans rested the majority opinion in the *Columbian* case upon a private rights theory, holding that the strikers, having violated their contract, were estopped from claiming an employee status. Petitioner argues that the same doctrine was adopted in the present case. Nothing could be farther from the truth. No question of private rights or estoppel against the employees or the Board was raised in this case; recognition was simply given to the inherent limitations imposed by the Congress upon the reinstatement power of the Board. The statute expressly requires that persons reinstated must be "employees." The sit-down strikers, having been properly discharged, the Court held that, as a matter of law, the Board was powerless to order reinstatement of such non-employees.*

In a further effort to tie the present decision to the unrelated *Columbian* case, Petitioner argues that in both cases misconduct of employees was held to excuse unfair labor practices, and, upon that premise, the cease and desist portions of the Board's order were not enforced. Whatever may have been true in the *Columbian* case, the Respondent in its argument and the Court in its decision relied upon the employees' misconduct solely as a ground for the discharge and refusal of reinstatement.

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*Added evidence of the vital difference between the two cases appears from the facts, *first*, that Judge Sparks, who wrote the opinion-in-chief in the instant case, concurred only in the conclusion in the *Columbian* case, thereby rejecting the estoppel or private rights theory for which that case stands, and *second*, that Judge Treanor, who dissented in both cases, here rests his dissent upon an entirely different ground, namely, that the employee status is perpetually preserved to striking employees as a matter of law (R. 1991).

The following excerpt from the opinion in chief completely refutes the Board's contentions:

> "It is urged by the Board that the commission of a crime by strikers does not preclude their right to bargain with petitioner. This we admit, provided they still are employees and represent a majority of all. What we hold is that there was just cause for discharge, it was exercised, and those who have not been re-employed are not employees and were not at the time of the finding and order of the Board. The present employees still have their rights of bargaining without interference of the petitioner, and these may be enforced upon proper procedure." (R. 1989)

The elimination from the rolls of the dismissed employees had completely dissipated any majority that Lodge 66 might have enjoyed on February 17, 1937. The "proper procedure" suggested by the Court is obviously an election reflecting the current desires of the present employees rather than those expressed more than two years ago, principally by men who have ceased being employees. That view is amply supported by *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869 (C. C. A. 2d), cert. den. 82 L. Ed. 1042.

II.

The decision of the Court below is in full accord with the decision of the courts of other circuits dealing with the same issues. The Second and Ninth Circuit decisions cited in the petition to show a conflict expressly involved discharge for union activity.

Counsel for the Petitioner construe *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C.

C. A. 9th) to hold that as a matter of law, under Section 2(3) of the Act, a discharge of strikers cannot terminate their employee status. Predicated upon that unfounded construction of the *Carlisle* case is the allegation of conflict between the circuits.

The *Carlisle* case did not deal with discharge for good cause. The men were there discharged as punishment for going on strike. The employer's right to discharge striking employees for good cause was neither considered nor determined. To anticipate and avoid this fundamental distinction, the Petitioner argues that the *Carlisle* discharge, having occurred prior to the effective date of the Act, must be treated as a discharge for "good cause" although it was inspired by, and used as punishment for, union activity. The *Carlisle* opinions take no such position. Admittedly under the Act, the employee status may not be terminated for going on strike. The *Carlisle* opinions while professing the contrary actually apply that limitation of the Act *retroactively*. The fact that the strike began, and the punitive discharge occurred, prior to the effective day of the Act was held immaterial. The Court said:

> "It is likewise clear that the individuals, that is, the union employees, ceased their work in order to sustain their position in the controversy. *Under the act*, therefore, the union members were 'employees.' • • • There is no limitation in the statute that individuals whose work has ceased as a consequence of a current labor dispute are employees only if they were not discharged prior to the effective date of the act." (Italics supplied.)

And the concurring opinion points out that even prior to the Act the common law recognized that the status of "striking employees" could not "be completely negatived

by the simple method of discharging the men." The supplementary opinion recently handed down in the same case confirms the retroactive application of the Act and refutes the interpretation placed upon the *Carlisle* case in the petition. *National Labor Relations Board* v. *Carlisle Lumber Co.*, (Decided Oct. 15, 1938).

Directly in point and completely supporting the decision of the Court below is the opinion of the Fourth Circuit Court of Appeals in *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531.* The Board had there directed the reinstatement of eight employees convicted of conspiracy to dynamite company property. Although there was no affirmative dismissal, the company refused reinstatement upon the basis of that lawless conduct. In upholding the employer's right to discharge or refuse reinstatement to a striking employee guilty of illegal conduct, the Court said (at page 535):

> "The company had announced that it would not consider any worker as an employee who failed to return to work on June 13. In this broad position it was not justified, as we have already indicated; but on July 15, when the request of the Union for further negotiations was made, it could lawfully decline to recognize as employees confessed offenders who had previously broken the law. The right of an employer to discharge or to refuse to reinstate a man who has committed a crime which endangers the safety of his fellow workers or the integrity of the plant cannot be successfully challenged. The statute does not purport to destroy this right, or contemplate that an employer must continue to employ or to treat as

*No application was made to this Court for certiorari in the *Standard Lime & Stone Co.* case.

> employees men who have engaged in unlawful conduct of this character. Nor would such an interpretation effectuate the policies of an act designed to remove the sources of industrial strife by encouraging the friendly adjustment of industrial disputes. Sections 1 and 10 (c) of the Act, 29 U. S. C. A. §§ 151, 160 (c)."

In reaching this decision, the Fourth Circuit Court of Appeals expressly gave effect to the views expressed by this Court in the *Associated Press* and *Jones & Laughlin* cases.

Applying the same authorities, the Fifth Circuit Court of Appeals has held that the seizure of the employer's property in a so-called sit-down strike or even threatened participation therein warranted dismissal. *Peninsular and Occidental S.S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411, 415.

Another element of conflict charged by the Petitioner concerns the holding in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869 (C. C. A. 2d), and *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), that misconduct of employees does not excuse the employer's unfair labor practices. With that view, there is no disagreement in the present case. The pleadings and the Court's opinion amply disclose that the misconduct of the employees was urged and recognized solely as a ground for discharge and refusal of reinstatement and *for no other purpose.* The very same straw man was set up by the Board before the Circuit Court of Appeals and was struck down by the Court with the following words:

> "It is urged by the Board that the commission of a crime by strikers does not preclude their right to

bargain with petitioner. This we admit, provided they still are employees and represent a majority of all'' (R. 1989).

The refusal to enforce collective bargaining with Lodge 66 was not grounded upon the misconduct of the union or its members but rather upon the commanding fact that the union had lost its majority.

III.

The order of the Circuit Court of Appeals gives effect to both the provisions and the objectives of the National Labor Relations Act.

1. The Board's order of disestablishment of the independent union was predicated upon a finding that the Respondent had supported, and in addition had interfered with and dominated, the organization (R. 1965). The court noted that there was evidence to sustain a finding of support, but did not accept the Board's finding of domination and interference (R. 1987). Not a single instance of interference or domination was cited in the Board's own decision, and there is none in the evidence (R. 1962-5). Not a scintilla of evidence of solicitation or encouragement of membership appears in the record. The Board's decision was confined to the single element of support.*

The test of any disestablishment order must be whether or not the employees have been deprived of a freedom of

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*The support consisted only of permitting the use of vacant space for its organization meetings when fear of violence rendered public halls unavailable, and the use of mimeograph machines for the preparation of, and bulletin boards for posting, two or three notices and ballots.

choice.* That a union capable of functioning independently, even though originally inspired by the employer, ought not be dissolved or even lose recognition rights was suggested by this court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270. Not one of the characteristics condemned by this court in the *Pennsylvania Greyhound Lines* case stigmatizes the Rare Metal Workers of America, Local No. 1. The Circuit Court of Appeals properly indicated that any question as to the freedom of adherence to that union can best be settled by proper procedure, namely, a secret election conducted by the Board.

2. The first date on which Lodge 66 was shown to have represented a majority was on February 17, 1937, the day of the sit-down strike. Charges which the Board ultimately dismissed were then pending before the Board. Impatient with the orderly processes created by the Act, members of Lodge 66 took the law into their own hands and seized Respondent's plant. For that seizure and the refusal to surrender possession of the plant, they were promptly and properly discharged. Notwithstanding that Lodge 66 had lost its majority, the Board directed the Respondent to recognize it as the exclusive bargaining agent of all employees,—an order contrary to the Act and destructive of its objectives. The refusal to enforce that portion of the order was proper and conforms with *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869, 870.

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*Report No. 573 of Senate Com. on Education and Labor, 74th Cong., 1st Sess., p. 10; Report No. 1147 of House Com. on Labor, 74th Cong., 1st Sess., p. 18. Cf. *In re Consolidated Edison Company of New York*, 4 N. L. R. B. 71; *In re Standard Lime & Stone Co.*, 5 N. L. R. B. #15.

3. For the first time in the Circuit Court of Appeals, the Board advanced, and now repeats, the contention that the sit-down strikers were never discharged. The entire case, from its inception, proceeded upon the premise, asserted and recognized by all parties including the Board, that these men had been discharged. The record is as follows, all italics being supplied:

(1) The amended charge, filed under oath by Lodge 66, alleges that:

> "*the company did discharge 95 of its employees on February 17, 1937,* for the reason that they were members of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection" (R. 33).

(2) Upon the basis of that charge, the Board issues its complaint, alleging that:

> "on February 17, 1937 while engaged in operations at the North Chicago plant, as above described, Respondent, acting by and through its officers and agents, *caused to be discharged the following employees*: [listing 92 persons] and each of them, for the reason of their membership in the union and that they engaged in concerted activities for the purpose of collective bargaining and for other mutual aid and protection" (R. 28).

(3) The answer admitted the discharge and raised as the sole issue the reason for the discharge, stating:

> "Respondent denies that on February 17, 1937, or on any other date, it discharged any of the per-

sons named in Paragraph 8 of the complaint, or any other persons by reason of membership in the Steel Union, or in any other union, or by reason of lawful concerted activities for the purpose of collective bargaining. * * * Respondent further avers that the *only persons named in Paragraph 8* of the complaint *who were discharged* by the Respondent *were those who had participated in the violent seizure* and unlawful retention of possession of Respondent's property, as hereinbefore set forth, and who *were discharged,* as hereinbefore set forth, solely by reason of such violence and unlawful conduct and for no other reason whatsoever" (R. 73).

(4) To state facts *not in dispute,* all of the parties—the Board, Lodge 66 and the Petitioner—entered into a stipulation of facts before the Trial Examiner, which was admitted into evidence as Respondent's Exhibit No. 7. The stipulation states that upon the refusal of the men to surrender possession, the company informed the sit-down strikers "that every man remaining in the buildings was discharged for the violent seizure and retention of the buildings" (R. 1781). The stipulation continues:

> "*At the time of the discharge* of the men in Buildings 3 and 5, their number and their identity and their union affiliations, if any, with 8 or 10 exceptions, was totally unknown to Mr. Aitchison, Mr. Anselm, Mr. Swiren, or any one connected with the management of the company, and *the discharge was a blanket discharge of all the men then within the buildings*" (R. 1781).

(5) The record further includes the final decree entered by the Circuit Court of Lake County in the proceeding to which Lodge 66 and substantially all of the

individuals involved were parties. The decree makes the express finding that:

> "• • • on February 17, 1937, the Plaintiff called upon the Defendants and all other persons who had so forcibly seized and occupied Plaintiff's premises, to evacuate the premises and the Defendants and the other persons in possession of the Plaintiff's plants having refused this demand, Plaintiff thereupon *discharged* from its employ for such unlawful and violent seizure of Plaintiff's property and plants, each of the Defendants and each of the other persons in possession of Plaintiff's premises" (R. 1766).

(6) Upon this record the Board held that the Petitioner's action was not a "discriminatory discharge."*

Upon this record the court was compelled to hold that there was a *bona fide* discharge for good cause, saying:

> "There seems to be no denial by the Board that there was ample cause for discharge. Indeed, in the argument before this court the Board admitted that the men in conducting a sit-down strike and resisting the officers 'did a foolish and illegal act.' Certainly it cannot be denied that an employer is warranted in discharging his employees and severing that relationship, when they take and retain exclusive possession of his property against his will. • • • What we hold is that there was just cause for discharge, it was exer-

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*The petition completely ignores this record. Instead it is urged that Respondent could not have "intended" the discharge because it subsequently *re-employed* some of the men. The Respondent's statement, issued at the time of the reopening of the plant, *supra* page 7, fully explains the basis for the re-employment. See also opinion-in-chief, R. 1988.

cised, and those who have not been reemployed are not employees and were not at the time of the finding and order of the Board." (R. 1987-8, 1989).

4 and 5. Upon the review proceedings before the Circuit Court of Appeals, the Respondent objected to the reinstatement provisions of the Board's order upon the following grounds:

First, that sixty-six sit-down strikers had been discharged for good cause;

Second, that the sixty-six sit-down strikers and the fourteen aiders and abettors who, it was stipulated, made the continued occupancy of the buildings possible through the furnishing of supplies, were guilty of a violation of the injunction of the Circuit Court of Lake County, a violation of the Criminal Code of Illinois,* the wilful destruction of property and violent resistance of law-enforcement officers, and that their reinstatement could not effectuate the policies of the act;

Third, that in a *bona fide* reorganization, almost forty jobs, some of which were occupied by sit-down strikers and some by others named in the complaint, had been completely abolished;

Fourth, that upon grounds of inefficiency, respondent objected to the reinstatement of seven individuals whose membership in the Union was unknown to the respondent and who had not participated in any union activity.†

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*Ill. Rev. Stat. 1937, Ch. 38, §§ 376-8.

†There was also a miscellaneous group of seven, including a foreman discharged after the strike, three who joined the Union after their discharge for inefficiency, etc. (R. 467-8, 1217-25, 1897, 1905, 1283).

The factual soundness of that position was never challenged by the Board. The *bona fide* character of the internal reorganization and the inefficiency of the seven individuals in question are not denied in the Board's decision or findings. The Board dealt with the last two groups by directing Respondent to reinstate all of the men and women involved and then carry out a new internal reorganization, discharging those for whom there were no jobs or who were inefficient. That the Board was without power to make such an order was conceded even in the dissenting opinion of Judge Treanor, in these words:

> ". . . there is no provision in the Act which purports to qualify the right of an employer to abolish unnecessary jobs either during the pendency of a labor dispute or after the commission of an unfair labor practice by an employer. In short, the National Labor Relations Act . . . does not protect striking employees from disadvantages which result from normal management action taken by the employer during the time the striking employees voluntarily refuse to work." (R. 1998).

There is unanimity of opinion among the Circuit Courts of Appeals that the Board has no power to order reinstatement of persons whose jobs no longer exist. *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th), *Black Diamond S.S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2nd), cert. den. No. 872, October Term, 1937.

CONCLUSION.

Neither the seizure nor the destruction of property can be defended as legitimate union activity. The judicial condemnation of the sit-down strike has been universal; its illegality cannot be doubted. Certainly it constitutes more than ample cause for the discharge of the participants.

Neither union sanction for their illegal conduct nor the usurpation of the "strike" label can shield participants in sit-down strikes from the discharge which the National Labor Relations Act permits and this court has twice recognized. The decision of the Circuit Court of Appeals conforms strictly to both the statute and the decisions of this court; it is also in complete harmony with applicable decisions in other circuits. The petition for certiorari should be denied.

Respectfully submitted,

BENJAMIN V. BECKER,
MAX SWIREN,
DON M. PEEBLES,
BEN W. HEINEMAN,
SIDNEY H. BLOCK,
Counsel for Fansteel Metallurgical Corporation, Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1938

No. 436

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FANSTEEL METALLURGICAL CORPORATION,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR FANSTEEL METALLURGICAL CORPORATION.

BENJAMIN V. BECKER,
MAX SWIREN,
DON M. PEEBLES,
BEN W. HEINEMAN,
SIDNEY H. BLOCK,
Counsel for Fansteel Metallurgical Corporation, Respondent.

CHICAGO LAW PRINTING CO., 111 N. WACKER DRIVE (COR. WASHINGTON ST.) TEL. FRANKLIN 6811

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1938

No. 436

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FANSTEEL METALLURGICAL CORPORATION,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR FANSTEEL METALLURGICAL CORPORATION.

Opinions Below.

The opinion, findings of fact, conclusions of law and order of the National Labor Relations Board (R. 1947-1971) are reported in 5 N. L. R. B. 930. The opinion of the Circuit Court of Appeals, the concurring opinion and the dissenting opinion (R. 1980-2000) are reported in 98 F. (2d) 375.

Jurisdiction.

The order of the Circuit Court of Appeals was entered on July 22, 1938. The petition for certiorari filed by the Board on October 22, 1938, was granted by this Court on November 21, 1938. The jurisdiction of this Court rests

upon Section 240(a) of the Judicial Code, 28 U. S. C. A. §347, and Sections 10(e) and (f) of the National Labor Relations Act.

STATEMENT OF THE CASE.

The proceedings before the National Labor Relations Board (herein called the "Board") grew out of the forcible seizure of Respondent's plant in a so-called "sit-down" strike. Upon the refusal of the men to surrender possession, they were promptly discharged for the seizure and retention of the buildings (R. 1781, 1766). An injunctional order to vacate the premises was openly defied and on two occasions the Sheriff's efforts to enforce the court writs were repulsed with violence. The forcible retention of the plant continued from February 17 to February 26, 1937, when the Sheriff effected an eviction through the use of tear gas (R. 1782, 1783).

The sit-down strikers were members of Lodge 66, which was organized in the summer of 1936 under the leadership of the Steel Workers Organizing Committee (R. 184-5). A vigorous membership drive then ensued, and on September 10, 1936 a committee of Lodge 66 presented to the Plant Superintendent a contract containing provisions for the regulation of working conditions, a closed shop and check-off system, and recognition of the union (R. 1633). After reading the agreement, Anselm, the Plant Superintendent, objected to the closed shop and check-off provisions (R. 212, 261). Committee members testified that he also took exception to the recognition of an outside union (R. 204). At the same time, acting on his own initiative and without authority from the company's officers, Anselm suggested that the men consider an employee representation plan but gave no assurance that the plan would be acceptable to the company (R. 218). Anselm thereupon obtained and presented to the President petitions of employees endorsing the

plan, and was immediately informed, "We don't want to do anything about that. Let them do as they please over in the shop." The petitions were thereupon physically destroyed by Anselm and nothing further was done to propose or promote the E. R. P. (R. 1352, 1951).[1]

Under the mistaken impression that an appointment had been arranged, the committee again called on Anselm on September 21st, this time accompanied by its organizer. Anselm insisted that no appointment had been made and thereupon the committee apologized for the intrusion and withdrew (R. 256, 285-6, 317).

Charges that the Respondent had failed to bargain collectively on September 10th were then filed with the Board (R. 23-4). These charges, heard during the present proceeding, were dismissed. The Board's decision holds that neither on September 10th nor September 21st did Lodge 66 represent a majority of the employees in the appropriate bargaining unit (R. 1956, 1982).[2]

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[1] This is what is characterized in the Board's brief as "a vigorous campaign on the part of Respondent to obtain" an inside union (Bd. Br. p. 30).

[2] The Board found that just prior to the September Meetings, the Respondent had employed an undercover agent to engage in espionage against Lodge 66. The undisputed evidence shows that out of a long list of reports dealing with general plant recommendations, only four even mentioned union activities (R. 341). The man in question was discharged December 1, 1936, almost three months prior to the plant seizure, and in no way participated in any of the matters in controversy before the Board (R. 360-1, 365, 379). It further appears from the undisputed evidence, including the Board's own stipulation, that not a single employee was discharged or disciplined for union membership or activity either as a result of the alleged espionage or otherwise (R. 1593, 361). Throughout the period, officers and leaders of Lodge 66 participated in pay raises without discrimination (R. 365).

No further meetings were held or requested until February 17, 1937, the day of the plant seizure (R. 287). In the meantime, Lodge 66 directed a systematic campaign of coercion and intimidation against Respondent's employees which extended into their very homes (R. 1765). Threats of physical violence and large fines or initiation fees ranging from twenty-five to one hundred and fifty dollars for each employee were freely employed (R. 1765).[3] In at least one department deliberate, provocative slowdowns were organized (R. 1311-3).

In two meetings held on February 17, 1937, with a large committee of Lodge 66, the Plant Superintendent denied a request that he confer with their outside organizer (R. 257-8, 298). The National Labor Relations Act was discussed during the meetings. The constitutionality of its application to the Respondent was questioned; Anselm called attention to the fact that the Supreme Court had not yet passed upon its validity (R. 258). No satisfactory conclusion was reached. The committee thereupon withdrew and held a brief, secret meeting in the chemical building, where it was determined to engage in a sit-down strike (R. 298-9).

Within a half hour following the conclusion of the second conference and without any notice or warning to the Respondent, about one hundred men forcibly seized Buildings 3 and 5, key buildings of the plant (R. 1762, *et seq.*, 1780). Foreman and other employees were compelled to leave with the warning that they had better go "peace-

[3] These facts necessarily influenced the Respondent's opinion, embodied in a public statement, that a large number of the men who remained within the buildings were compelled to do so against their will. In the same statement, the Respondent announced that it would give favorable consideration to applications for reemployment by men so coerced (R. 1336).

ably," and the buildings were then locked and barricaded from the inside (R. 1130). The seizure effected a complete stoppage in the operation of the entire plant (R. 1762, *et seq.*, 1780).

About four hours after the plant seizure, the Plant Superintendent and counsel for the Company, accompanied by two police officials, sought entrance into the buildings and demanded surrender of possession. Upon the refusal of the men to leave, they announced, upon orders of the President, that all of the men remaining in the buildings were discharged for the violent seizure and retention of the premises (R. 1780-1). All of the parties stipulated before the Trial Examiner that there had been a blanket discharge of all the men then in occupation of the buildings and that at the time of the discharge their number, their identity and their union affiliations, if any, with eight or ten exceptions, were totally unknown to the Respondent or anyone connected with its management (R. 1781).[4]

The morning following the discharge, Respondent filed a complaint for an injunction in the Circuit Court of Lake County, Illinois. After full hearing, at which counsel for Lodge 66 and the individual defendants appeared and were heard, the Circuit Court of Lake County entered a finding that the seizure of the buildings and their continued occupancy was illegal (R. 1781). A mandatory injunction thereupon issued directing that the buildings be vacated and possession be restored to the Respondent (R. 1780-1, 1763-4). Upon being served with the injunction by the Sheriff, the men refused to comply, denied the

[4] While the Board's brief now reverses the position adopted in the petition for certiorari and admits the discharge, it does so only as a procedural matter. Accordingly, in order that there may be no misapprehension, the entire record, including the stipulation of facts, is set out *infra* p. 20n.

Sheriff admittance into the buildings and announced their intention to "hold" the premises (R. 1782, 1767-8). The refusal to comply with the order was reported to the Circuit Court of Lake County in a verified petition for a rule to show cause. The Circuit Court of Lake County thereupon issued a writ of attachment directing the Sheriff to arrest the men remaining within the buildings and bring them before the Court to show cause why they should not be held in contempt.

On the morning of February 19th, the Sheriff, accompanied by about one hundred deputies, attempted to enforce the writ of attachment. Copies of the writ were served upon the men in both buildings, and again the men refused to come out (R. 1782, 1767-8). Thereupon, the deputies attempted to force an entrance into Building 5. With axes and battering rams they succeeded in breaking down one door only to be met by pressure streams of fire extinguishing chemicals fed from huge tanks and directed by the men on the inside (R. 1807, 1769, 1089, 1124, 1133). At the same time the men on the upper floors of both buildings began bombarding the Sheriff and his deputies with large quantities of sulphuric acid and heavy steel and iron missiles, including pipes, bolts, nuts, reamers, wire reels and sharp end tools (R. 1769-70, 1782, 1092-5, 1113, 1122-3).[5]

The sulphuric acid was particularly terrifying as it was poured from windows and hurled in quart bottle containers at the Sheriff's men below (R. 1815, 1090, 1092). Certain of the sit-down strikers, terrified by the imminence of per-

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[5] Pictures of the type of missiles employed appear as Respondent's Exhibits 10, 11, 12, 26, 27 and 29 (R. 1809, 1811, 1813, 1833, 1835, 1837, 1841). A picture of the quart bottles of acid collected at a "throwing station" appears as Respondent's Exhibit 13 (R. 1815).

manent injury to the deputies, protested the use of the sulphuric acid but to no avail (R. 1173, 1176-7).

A number of deputies were burned by the sulphuric acid and other deputies were injured by the heavy flying missiles (R. 1120-1, 1771, 1840, 1841). To protect his men, the Sheriff withdrew and employed tear gas in an effort to dislodge the occupants of the plant. That served only to increase the intensity of the acid and missile barrage and the Sheriff and his deputies were compelled to withdraw without executing the writs (R. 1770).

The sit-down strikers continued their occupancy of the buildings until the morning of February 26th. During this interval they were amply supplied from the outside with food, clothing, beds, bedding, stoves, radios, home equipment and supplies (R. 1784-5, 1821).[6] Leadership in furnishing such supplies was provided by fourteen of the men ordered reinstated and others with full knowledge of the injunction and for the express purpose of enabling the sit-down strikers to defy the Courts and law enforcement authorities and hold their fort (R. 465, 1784-5).

On the morning of February 26th, the Sheriff and his deputies again attempted to enter the buildings. A more violent counterpart of the first resistance then ensued. Tools, reels and other heavy missiles, intermingled with quart bottles of sulphuric acid, were again hurled from the windows at the law enforcement officers (R. 1771,

[6] The volume of the supplies is indicated by a photograph of but one of several van loads of equipment found in the plant after the men had been ousted (R. 1821, 1101). The equipment and supplies were brought in through windows, the doors remaining barricaded. The large menacing crowds on the outside made impossible interference by the Sheriff (R. 1773).

1115). It was stipulated that the Sheriff was then compelled to use tear and emetic gas in order to evict the occupants and restore possession of the buildings to the Respondent (R. 1783).

Sixty-six of the men ordered reinstated were admittedly participants in the violent seizure and retention of the plant and had full knowledge of the injunction. The writ of injunction and writ of attachment had been read to the men through open windows, a large number of copies of the writs had been passed into the buildings, and twice daily there were delivered to both buildings Chicago and Waukegan papers prominently displaying accounts of the occupation of the plant, the injunction and the unsuccessful efforts of the Sheriff toward enforcement (R. 1782-3, 1767-9). It was stipulated that fourteen other men ordered reinstated deliberately participated in the sit-down strike as aiders and abetters; and that these, having full knowledge of the injunction, procured and delivered the required food, equipment and supplies. The occupants of the buildings were thereby enabled to retain their unlawful possession (R. 465, 1784-5).

Thirty-seven of the men who participated in the seizure of the plant were tried and convicted of contempt by the Circuit Court of Lake County and were fined and sentenced to jail. Twenty-four received $100.00 fines and 10-day sentences, eleven received $150.00 fines and 120-day sentences, and two received $300.00 fines and 180-day sentences. Two who had not been employed by the Respondent but had aided and abetted in the plant retention also received fines and jail sentences. The hearings with respect to the balance of the men were continued by the Court upon its own motion (R. 1738-61). A full hearing of the merits of the case then ensued and a final decree embodying full findings of fact was thereupon entered

without objection by counsel for the defendants, and no appeal has ever been prosecuted therefrom (R. 1762, 1984).

An appeal from the contempt sentences resulted in an affirmance by the Appellate Court of Illinois for the Second District (295 Ill. App. 323). The Supreme Court of Illinois denied leave to appeal on October 17, 1938 (295 Ill. App. xxiii).

A large and direct loss was inflicted upon the Respondent by the men participating in the plant seizure and in the violent resistance to the Sheriff. Most of the windows and much of the sash had been broken to obtain air for combatting gas and to provide openings for the missiles thrown at the Sheriff's men (R. 1091, 1179, 1823-7). Other parts of the building interiors were damaged. Further physical destruction included the loss and damage of numerous tools and parts, many of which had been hurled through the windows, large quantities of sulphuric acid, 50,000 valuable contact points and other inventory materials dropped from windows upon the deputies or damaged within the buildings, two furnaces which were permitted to cool rapidly and burn out, general building damage occasioned by foamite and other chemicals in the fire extinguishers, a large Niagara shear ruined by foamite sprays, and other physical injuries occasioned by the use of the buildings for living quarters (R. 1095, 1099, 1123, 1180, 1817-28).[7] Machinery rusted and was otherwise dam-

[7] The attitude of certain of the men engaged in the property destruction is exemplified by the following: Chudy openly threatened, "If they don't leave us alone, we are going to start tearing the machines down and throw them on the deputies" (R. 1158). Another deliberately threw a jar of tantalum contact points out of the window, shouting, "Here goes a thousand dollars worth of rare metals" (R. 1123). In this connection it is interesting to note that the entire subject of property destruction is dismissed in the Board's decision with the casual statement that there had been no "sabotage" (R. 1967).

aged by exposure and lack of care. The President of the Respondent, whose testimony was uncontradicted, computed its direct loss to aggregate $62,000.00 (R. 1181-2).

In announcing the reopening of the plant after ten days of repair and rehabilitation work, the President of the Respondent issued the following public statement on February 26, 1938:

> "All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the eighty men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for reemployment from such men will receive favorable consideration.
>
> "We cannot condone the defiance of the courts or the resistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant" (R. 1336).

Twelve of the men who had managed to escape or otherwise leave the buildings before the eviction, and twenty-three who had remained throughout the entire period filed applications for reemployment and were hired (R. 1772, 1784, 1985).

Reemployment was affirmatively refused to certain of the men and in no case did it extend to men who were thereafter sentenced for contempt by the Circuit Court of Lake County (R. 1741, 1784, 1985). Many old employees returned and empty places were filled by new applicants. Sixty-one men and women who returned to work were members of Lodge 66, and all of them, including officers and members of the bargaining committee, were reinstated

without any condition as to union membership or activity (R. 1343).[8]

With the resumption of operations came plant changes in the interest of economy. Numerous jobs were completely abolished and others were materially altered, effecting substantial savings. The entire section manufacturing standard dies was abolished (R. 1192). The maintenance department was eliminated and a small repair crew of two men and two helpers substituted (R. 1190). Women were employed for the entire cutting department, replacing both sit-down strikers and non-strikers (R. 1214, 1234). Piece rates which had prevailed in certain departments were abolished and the entire plant placed on an hourly basis (R. 1189, 1260). Certain of the jobs eliminated had been previously occupied by persons ordered reinstated by the Board (R. 1829, 1831, 1291, 1298-9).[9]

After the reopening of the plant there was general talk among the workers about the organization of a labor union. It was a subject of general conversation, some favoring

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[8] Throughout its brief and as a major premise for a substantial portion of its argument, the Board insists that reemployment and reinstatement was made conditional upon surrender of union membership and collective bargaining rights (Bd. Br. pp. 17, 50, 51, 75). No record citation is given for this unwarranted statement and there is not a scintilla of evidence nor any finding of the Board to support it. The specific, uncontradicted testimony is that no limitation respecting union membership or collective bargaining activity was imposed as a condition of reinstatement or reemployment (R. 1216, 1282-3). The Board's own witnesses related reinstatement offers in which no conditions were mentioned (R. 451, 452-3, 460-1, 542).

[9] For the convenience of the Court, an analysis and classification of all persons named in the complaint, reflecting the record evidence as to each, has been prepared as an appendix to this brief.

an American Federation of Labor local and others an independent union (R. 1020-21). About the middle of April, 1937, a self-appointed committee consisting of both old and new employees called a general meeting of the workers who decided overwhelmingly, by secret ballot, to establish an independent union. Rare Metal Workers of America Local No. 1 was thereby created (R. 932-3, 905, 1008, 1011). Supervisory employees were excluded from membership and did not participate either in the organization of the union or in the conduct or management of its affairs (R. 1003, 1020-2). Every witness admitted that the management exerted no influence or coercion directly or indirectly to encourage membership in the organization. All who testified, whether they joined or refused to join, admitted that they acted of their own free will and were never threatened or disciplined or even approached by any member of the management on the subject of the independent union (R. 956, 982, 985-6, 990).

Because the respondent had permitted the new organization to hold its two initial meetings in a vacant company building, and to mimeograph notices upon its machines and post them upon its bulletin boards, and to place ballot boxes in building lobbies for an election during noon hour, the Board held that the respondent had supported, dominated and interfered with the organization (R. 1963-5).

The evidence showed that the organization and the committee had sought but had been refused the use of public halls in the community because feeling was running high and there was fear of violence (R. 970-79). The subsequent monthly meetings were held in a church of which employees were members and subsequently in halls paid for in each instance by the union out of dues collected from its membership (R. 1321, 1851, 1855).

All of the witnesses testified that the management had no hand whatever, directly or indirectly, in the conduct of the union affairs (R. 954, 920, 921, 955-7, 985, 989, 990, 1018, 1020).

The complaint issued by the Board three months after the termination of the sit-down strike was heard by a Trial Examiner. Both in the exceptions to the Intermediate Report of the Trial Examiner and in the petition for review by the Court, the denial of a fair hearing was charged. This rested upon the Board's discriminatory denial of subpoenas upon Respondent's formal and repeated requests. The record with respect to these matters appears fully in the Argument.

Upon the entry of the Board's order, Respondent filed a petition for review in the Circuit Court of Appeals for the Seventh Circuit. A cross-petition for enforcement was presented by the Board. Enforcement was denied and the Board's order was set aside by the Court (R. 2000). Judge Treanor dissented, holding, however, that the Board's order was invalid in so far as it required reinstatement of persons for whom there were no jobs or who were shown to be inefficient (R. 1998, 2000).

SUMMARY OF ARGUMENT.

I.

The Board is wholly without power to order the reinstatement of men discharged for good cause. The Board concedes that there was a *bona fide* discharge for ample cause—not as punishment for union membership or collective bargaining activity. The Act does not abridge the employer's right of discharge for cause. Under Section 10(c) of the Act, the Board's power to order reinstatement is limited to persons (1) who are "employees" and (2) whose reinstatement will effectuate the policies of the Act.

A. Section 2(3) of the Act defines "employee" to include individuals who cease work by reason of a labor dispute or an unfair labor practice. The Congressional intent is that workers shall not *lose* their employee status by striking. This section does not destroy the employer's right to discharge striking employees for cause, nor does it, conversely, confer upon striking employees immunity from discharge for cause.

B. Section 10(c) authorizes the Board to command "such affirmative action, including the reinstatement of employees, with or without back pay, as will effectuate the policies of this Act." Only employees may be ordered reinstated. In asserting the power to require reinstatement of non-employees, the Board treats the phrase "including the reinstatement of employees" as superfluous. The specific definition of the reinstatement power qualifies and limits the general grant.

C. The constitutional protection of the employer's right of discharge can be required to give way only to the extent that it collides with the employee's coequal right of self-organization. The right of self-organization does not embrace a license to seize the employer's plant. The lawless occupation of plants is not and could not constitutionally be safeguarded by the Act. Construed in the light of the restraints imposed by the Fifth Amendment, the Act clearly preserves the employer's right to discharge employees for cause, whether they be at work or on strike, and confers upon the Board no power to compel employment of former employees.

(Point I deals with section 2(b) of the Board's order, defended under Point II, A, 1 of the Board's brief.)

II.

A. The reinstatement of discharged employees guilty of the property destruction and lawlessness portrayed on this record cannot advance either the immediate objective of collective bargaining or the ultimate end of industrial peace. Spurning the legal remedies available under the Act, including the pending proceeding before the Board, the sit-down strikers took the law into their own hands. The Board charges the employer with full responsibility for that violence, vandalism and lawlessness thus undertaken as a means of self-redress. That is nothing more than an approval of lynch law. The deliberate lawlessness disqualified the participants as suitable employees. Respondent had ample grounds for its apprehension that their reemployment would engender plant demoralization and strife. Contrary to the Board's argument, no conditions as to union membership or collective bargaining activity were imposed upon any persons reemployed. Respondent

accepted applications for reemployment only from those believed to have been coerced and intimidated into remaining within the buildings. That action did not, as to the remaining men, either vitiate their valid discharge or qualify them as suitable employees. Their reinstatement cannot effectuate the policies of the Act.

(Point II, A deals with section 2(b) of the Board's order, defended under Point II, A, 2 of the Board's brief.)

B. The reinstatement of persons (1) whose jobs have been abolished, and (2) who are shown to have been inefficient, cannot effectuate the policies of the Act. The *bona fide* character of the internal reorganization and the inefficiency of the seven individuals in question are not denied in the Board's decision or findings. The Board dealt with these two groups by directing Respondent to reinstate all of the persons involved and then to carry out a new internal reorganization, discharging those for whom there were no jobs or who were inefficient. Ordering the reinstatement of such persons would be productive only of futile plant disorganization and constitutes an abuse of discretion.

(Point II, B deals with section 2(b) of the Board's order, defended under Point II, A, 3 of the Board's brief.)

C. The back-pay provision of the Board's order constitutes a penalty for seeking judicial review of the order. This is particularly true with respect to persons whose jobs have been abolished or who were shown to be inefficient. The Board's order recognizes that upon their reinstatement they may be immediately discharged.

(Point II, C deals with section 2(c) of the Board's order, defended under Point II, A, 4 of the Board's brief.)

III.

The Court properly held that the elimination from the rolls of the employees dismissed for cause had completely dissipated any majority that Lodge 66 might have enjoyed. The Board is without power to order the recognition of Lodge 66 as the exclusive bargaining agency, in the face of the fact that it no longer represents a majority.

The order to cease and desist from refusing to recognize Lodge 66 is not different from the affirmative command for recognition. Both are invalid in the absence of a present majority.

(Point III deals with section 1(c) and section 2(a) of the Board's order, defended under Points I, B and II, B of the Board's brief.)

IV.

The record is wholly barren of any evidence to sustain the finding of domination and interference respecting the Rare Metal Workers of America, Local No. 1, and there is no substantial evidence of support. The management had no part in the formation or conduct of the union. It exerted no influence or coercion to swell its rolls. Mere passivity or absence of hostility does not constitute such pressure or abuse of relation as to "corrupt or override" the will of employees. Further, disestablishment is an unwarranted remedy against an organization free from employer domination both in its conduct and structure.

(Point IV deals with section 1(b) and section 2(d) of the Board's order, defended under Point III of the Board's brief.)

V.

Not a single subpoena requested by the Respondent was granted before or during the eighteen-day hearing. Not a single subpoena desired by the Board's attorney was refused. This arbitrary and discriminatory refusal of subpoenas denied to the Respondent the fair hearing required by the Fifth Amendment. The records for which subpoenas *duces tecum* were requested were essential for adequate cross examination of the Board's witnesses, who testified orally on the same subjects. The prejudice permeates the entire record and the remedy of additional evidence provided by Section 10(e) of the Act is inadequate.

(Point V is in answer to Point IV of the Board's brief.)

ARGUMENT.

I.

The Board has no power to require reinstatement of the men discharged for good cause.

The decision of the Circuit Court of Appeals reversing the order of reinstatement of the sit-down strikers is predicated upon the grounds:

First, that the valid discharge for good cause terminated their status as employees; and

Second, that the Board is without statutory power to require the reinstatement of persons other than employees.

The Court said:

> "There seems to be no denial by the Board that there was ample cause for discharge. * * * Certainly it cannot be denied that an employer is warranted in discharging his employees, and severing that relationship, when they take and retain exclusive possession of his propetry against his will. They had a complete and adequate remedy, without cost to them at the hands of the Board, and by the use of which they would have lost nothing in time or wages, if their cause were just. The employer had no coordinate right in this respect * * *." (R. 1988)
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> * * *
>
> "What we hold is that there was just cause for discharge, it was exercised, and those who have not been reemployed are not employees and were not at the time of the finding and order of the Board." (R. 1989)

The *bona fide* discharge of the sit-down strikers cannot be open to question on this record. Nevertheless, for the first time in the Circuit Court of Appeals and then throughout the petition for certiorari, the Board insisted that the sit-down strikers had never actually been discharged and that the announcement was but a "tactical manoeuver." That challenge to the validity of the discharge is now abandoned in the Board's brief (p. 8n), but the Board nevertheless thereafter continues to characterize the discharge as "attempted," "tactical," "assumed," "purported" (Bd. Br. 13, 38, 40, 43n, 46). In view of the basic importance of the discharge to the Respondent's position and to avoid any misapprehension that the matter is merely procedural as the Board indicates, the record is detailed in the margin.[10] The discharge was conceded by all of the parties in the pleadings and the stipulation of facts and is established beyond question by all of the evidence. It is upon that substantive basis that the decision of the Circuit Court of Appeals rests.

The Court below properly treated in the same category as those discharged, the fourteen men who, with knowledge

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[10] The record on the subject of discharge is as follows:

(1) The amended charge, filed under oath by Lodge 66, alleges that:

> "The company did discharge 95 of its employees on February 17, 1937, for the reason that they were members of Lodge 66, Amalgamated Association of Iron, Steel and Tin Workers of North America, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection" (R. 33).

(2) Upon the basis of that charge, the Board issued its complaint, alleging that:

> "on February 17, 1937 . . . Respondent, acting by and through its officers and agents, caused to be discharged the following employees: [listing 92 persons] for the

of the injunction, had actively participated in the sit-down strike by providing the supplies and equipment necessary for the forcible retention of the premises and the violent resistance to the law enforcement officers. In exercise of its admitted power of discharge for good cause, the Respondent had declined to recognize these men as employees and to reinstate them, upon the express ground that they had participated in that common criminal undertaking (R. 75). Taking such position was the equivalent of exercising the Respondent's right of discharge. The Fourth Circuit Court of Appeals has expressly recognized that such power of discharge for participating in a criminal cause may be exercised without a formal announcement, saying:

> "The company had announced that it would not consider any worker as an employee who failed to return to work on June 13. In this broad position it was not justified, as we have already indicated; but on July

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reason of their membership in the union and that they engaged in concerted activities for the purpose of collective bargaining and for other mutual aid and protection" (R. 28).

(3) The answer admitted the discharge and raised as the sole issue the grounds for the discharge, stating:

> "Respondent further avers that the only persons named in Paragraph 8 of the complaint who were discharged by the Respondent were those who had participated in the violent seizure and unlawful retention of possession of Respondent's property, as hereinbefore set forth, and who were discharged, as hereinbefore set forth, solely by reason of such violence and unlawful conduct and for no other reason whatsoever" (R. 73).

(4) The stipulation of facts signed by Lodge 66 and the Board states that, upon the refusal of the men to surrender possession, the company informed the sit-down strikers "that every man remaining in the buildings was discharged

15, when the request of the Union for further negotiations was made, *it could lawfully decline to recognize as employees* confessed offenders who had previously broken the law. The right of an employer to discharge or *to refuse to reinstate a man* who has committed a crime which endangers the safety of his fellow workers or *the integrity of the plant* cannot be successfully challenged. The statute does not purport to destroy this right, or contemplate that an employer must continue to employ or to treat as employees men who have engaged in unlawful conduct of this character. Nor would such an interpretation effectuate the policies of an act designed to remove the sources of industrial strife by encouraging the friendly ad-

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for the violent seizure and retention of the buildings" (R. 1781). The stipulation continues:

> "At the time of the discharge of the men in Buildings 3 and 5, their number and their identity and their union affiliations, if any, with 8 or 10 exceptions, was totally unknown to Mr. Aitchison, Mr. Anselm, Mr. Swiren, or any one connected with the management of the company, and the discharge was a blanket discharge of all the men then within the buildings" (R. 1781).

(5) The record further includes the final decree entered by the Circuit Court of Lake County in the proceeding to which Lodge 66 and substantially all of the individuals involved were parties. The decree makes the express finding that the sit-down strikers were "discharged from its employ for such unlawful and violent seizure of plaintiff's property and plants" (R. 1766).

(6) The fact of the discharge was repeated in the public statement of the Respondent and communications to Lodge 66 and was never challenged in any meeting with Lodge 66 committees (R. 1336, 1670, 1673, 483).

(7) Upon its record the Board held that Respondent's action was not a "discriminatory discharge" and dismissed that portion of the complaint (R. 1961).

justment of industrial disputes. Sections 1 and 10 (c) of the Act, 29 U.S.C.A. §§ 151, 160 (c)." (Italics supplied.) *Standard Lime & Stone Co.* v. *National Labor Relations Board,* 97 F. (2d) 531, 535, 536.

The sole source of the Board's power to order reinstatement is Section 10(c) of the Act, authorizing the Board to require an employer

> "to take such affirmative action, including reinstatement of *employees* with or without back pay, as will effectuate the policies of this Act." (Italics supplied.)

Under this statutory grant, the Board's power to order reinstatement is expressly limited to persons who are "employees" and whose reinstatement will effectuate the policies of the Act. The Court below held that upon their discharge for cause, the sit-down strikers ceased being employees and that the Board was powerless to order their reinstatement.

To parry the force of the discharge for cause, the Board argues, first, that Section 2(3) of the Act prohibits discharge of strikers for cause and confers a statutory status of "employees" for the purpose of reinstatement by the Board, and secondly, that under Section 10(c), the Board has authority to order reinstatement of persons who are not employees. Both contentions were urged below and rejected by the Court, the latter contention being denied in the dissenting (R. 1992) as well as the majority and concurring opinions. We shall now consider each separately.[11]

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[11] Under Point II we assume, for the sake of argument, that the Board had the *power* to order the reinstatement of discharged employees and consider whether their reinstatement would "effectuate the policies of this Act."

A. The statute does not destroy an employer's right to discharge employees, whether at work or on strike, for good cause.

The only provisions in the Act dealing with the employer's right of discharge are Section 8(3) prohibiting discrimination in tenure of employment for the purpose of encouraging or discouraging union membership and Section 8(1) barring interference with the exercise by the employees of the self-organization and collective bargaining rights guaranteed by the statute. Nowhere does the Act undertake to abridge or restrain the employer's right to discharge employees for cause.

The contention is urged in the Board's brief, however, that Section 2(3) of the Act preserves to strikers the statutory status of "employees" so long as they are on strike, and thereby prohibits their discharge for good cause. No exhaustive definition of the term "employee" appears in the Act. Section 2(3) states:

> "The term 'employee' shall include any employee, . . . and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment . . ."

Congress thereby provided only that the status of employees shall not be *lost* by going on strike. The Senate Committee Report discloses that this provision was designed to recognize

> "the principle that men do not *lose* the right to be considered as employees for the purpose of this appeal merely by collectively refraining from work during the course of a labor controversy." (Italics supplied.) Report No. 573 of Senate Com. on Education and Labor, 74th Congress, 1st Sess., p. 6.

Similarly, the Circuit Court of Appeals for the Fourth Circuit stated in *Moorseville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61, 66:

"Congress desired in its definition of an employee to indicate that a worker does not cease to be an employee merely because he has lost or left his job in consequence of a current labor dispute."

Section 2(3) simply codifies the rapidly devolping judicial view that individuals going on strike do not forfeit their employee status. *Cf. Jeffrey-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134. The employment relationship may not be terminated merely for going on strike. The purpose of the statutory provision is to secure strikers in their status as employees—not to provide them with a cloak of immunity from discharge for proper cause. There is no Congressional intent that ceasing work in connection with a labor dispute shall confer a license for plant seizure, violence or other acts constituting legitimate grounds for discharge. The position of an employee ceasing work in connection with a labor dispute or as a consequence of an unfair labor practice is no different—no better and no worse—than that of his brother who remains at work. Both remain subject to discharge for proper cause—which, in the words of this Court, means "any reason other than union activity or agitation for collective bargaining."[12] *Associ-*

[12]Even the dissenting judge below recognized that the employee status of strikers may be terminated by employer action. He said in his opinion:

"In short, the National Labor Relations Act continues the employer-employee relationship for the purpose of enabling the Board to effectively prevent unfair labor practices, but does not protect striking employees from disadvantages which result from normal management action taken by the employer during the time the striking employees voluntarily refuse to work." (R. 1998).

How he reconciles this with his earlier conclusion that the employee status continues as a matter of law and cannot be terminated by the employer for good cause is not indicated.

ated Press v. *National Labor Relations Board*, 301 U. S. 103, 132.

Without specifically referring to Section 2(3) of the Act, this Court has twice emphasized and reaffirmed the employer's "undoubted right" to sever the employer-employee relationship for cause.

> "The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees. * * * The petitioner is at liberty, whenever occasion may arise, to exercise its undoubted right to sever his relationship for any cause that seems to it proper save only as a punishment for, or discouragement of, such activities as the act declares permissible." *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132.

> "The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, 46.

Neither reason nor the advancement of the legislative objectives warrants denial of an employer's right of discharge which the Board seeks to read into this section. Significantly enough, the Board's brief refers neither to the Congressional history and logical purpose of Section 2(3) nor to the views expressed by this Court. Instead, resort is had to a paradoxical argument. On the one

hand, the Board admits that an employer, even though he has committed an unfair labor practice, "is free to terminate all the normal incidents of the employee relationship for cause" (Bd. Br. pp. 43-44). On the other hand, and in the very same sentence, the Board arrogates to itself the power to restore the discharged employees to their former employment. What are these "normal incidents" of an employer relationship which the Board admits the employer's discharge may terminate? How do they differ from the rights and duties which would accrue upon the consummation of the Board's order of reinstatement? The Board ventures no explanation. Obviously, the Board has invented this self-contradictory theory for the sole purpose of paying lip service to the pronouncements of this Court without giving effect to their substance. If a discharge has any meaning at all, it terminates the employer's right to receive the employee's services and its obligation to pay him wages. Clearly an order of reinstatement by the Board would serve directly to override and nullify the employer's admitted right of discharge for cause.

No distinction is made in Section 2(3) between a strike resulting from an ordinary labor dispute and a strike caused by an unfair labor practice. Whatever the cause, the section makes the same provision that strikers shall enjoy the status of employees. If a prohibition against discharge for cause be read into the section, it applies with equal force to the employer innocent of any unfair labor practice as to the employer guilty of one. The test of the application of this section is whether the employees are on strike. Given effect logically, the Board's position must be that, even had the plant seizure in the instant case been undertaken in a wage and hour controversy wholly devoid of any unfair labor practices, this Respondent still would

be powerless to sever the employment relationship.[13] Particularly in view of the constitutional history of similar legislation, we submit that had Congress intended so extraordinary a restraint upon the normal right of discharge, it would have said so specifically and plainly in the statute. And the subject would have been at least mentioned in the Committee Reports or Congressional Debates.

The legitimate grounds which may arise for the discharge of an employee while on strike are many and varied. They may include physical incapacity; embezzlement discovered after the cessation of work; disclosure of secret processes or trade secrets to competitors; installation of automatic machinery; the arrest of the employee for burglary or other crimes; the dynamiting of the plant; and the forcible seizure and withholding of the plant. It is difficult to see how the legislative purposes could be advanced by enjoining the employer's constitutional right of discharge upon such grounds. Illegal conduct undertaken in aid of a strike or other union activity carries no legal sanction. ". . . No wrong, real or fancied, carries with it legal warrant to invite as a means of redress the cooperation of a mob, with its accompanying acts of violence." *In re Debs*, 158 U. S. 564, 598.

The principal authority relied on by the Board is *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138. In that case the men were discharged as punishment for going on strike. The employer's right to discharge striking employees for good cause was neither con-

[13] Wages and hours were the major issues in 29.4% of the sit-down strikes in 1937 and formed the major issue in 29.9% of all the strikes in that year. An additional 17% of the sit-down strikes involved grievances over working conditions other than union organization matters. 47 Monthly Labor Review, 361-2 (August, 1938).

sidered nor involved. Nor is it an answer to this fundamental distinction to say, as does the Board, that since the discharge occurred prior to the effective date of the Act, it was for good cause, no matter what its motivation. The most casual examination of the opinion discloses that insofar as the Court was concerned, it regarded the definition contained in Section 2(3) as controlling and applied it retroactively. The concurring opinion rests in part upon the judicial expressions, prior to the Act, that employees could not be discharged for going on strike. No consideration was given to the purpose of Section 2(3) or its effect upon a discharge for good cause. *Cf. National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 535 (supplementary opinion).

Directly in point and completely supporting the decision of the Court below is the opinion of the Fourth Circuit Court of Appeals in *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531. The Board had there directed the reinstatement of eight striking employees convicted of conspiracy to dynamite company property. In reversing the Board and sustaining the employer's right to discharge or refuse reinstatement to a striking employee guilty of illegal conduct, the Court expressly held that the "statute does not purport to destroy this right."

B. The Board's statutory power of reinstatement is limited to employees.

In further justification of its order, the Board asserts the power to require reinstatement of men admittedly no longer employees. Section 10(c) authorizes the Board to require "such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." The Board contends that it may

ignore the specific power to reinstate only employees and may draw upon the general grant for a widened and, indeed, unlimited reinstatement power.[14]

The phrase "including reinstatement of employees" and particularly the qualifying word "employees", are treated as wholly superfluous. Viewed differently, the authority to require reinstatement of employees is expanded to read "reinstatement of employees or *anyone else*".

Passing for a moment the constitutional implications inherent in that construction, it appears perfectly clear that the qualifying phrase "including reinstatement of employees" was inserted by way of limitation upon the Board's power. Reinstatement being so extraordinary a power, Congress thought it necessary to specify that authority and to define its limitations. Such has been the construction in decisions in two circuits, both unmentioned by the Board. Precisely the same point was raised in *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61, 66 (C. C. A. 4th). The Board there insisted that under the general grant of power in Section 10 (c), it could require reinstatement of strikers who had obtained equivalent employment and thereby had ceased to be employees. The order of reinstatement was set aside, the Court concluding that the Board's statutory power was restricted to the reinstatement of employees and did not extend to former employees.

Similarly, in *National Labor Relations Board* v. *Carlisle Lumber Company*, 99 F. (2d) 533, 537 (C. C. A. 9th),

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[14] In effect, the Board is contending for the power to veto an employer's discharge for cause and, since the Board's argument proceeds independently of Section 2(3), that veto power would extend to the proper discharge of working and striking employees alike.

the Court held the phrase in question to be one of qualification and limitation, saying:

> "The only apparent basis for a construction which would permit 'back pay' without reinstatement is by considering that such power arises from the Board's power to order a person guilty of unfair labor practices 'to take such affirmative action • • • as will effectuate the policies of this Act' independently of the words omitted from that quotation, which are: 'including reinstatement of employees with or without back pay'. I believe that since 'reinstatement' and 'back pay' were singled out for special treatment, it was intended that the general words were to be limited thereby."

There was complete unanimity among all three judges of the Court below on this point. The dissenting Judge conceded:

> "If the employer, in fact and in law, terminated the employer-employee relationship, it necessarily follows that that part of the order of the Board which required reinstatement was erroneous, since it is clear that the Board has power to reinstate only by ordering the employer to put back to work persons whose status, or relationship, of employee is preserved by the National Labor Relations Act."

This court has recognized that a specific addition in an "including" phrase may properly narrow and qualify a general grant. *United States* v. *Sweet*, 245 U. S. 563, 573. The Utah Enabling Act was there construed by this Court. Section 6 of that act provided that sections 2, 16, 32 and 36 in every township be set aside for the support of schools. Section 8 granted, for the establishment of the University of Utah,

"110,000 acres of land to be selected and located as provided in the foregoing section of this Act and including all saline land in said State." The issue presented was whether mineral lands passed under the general grant in Section 6. This Court held that the general grant did not convey title to mineral lands, because (a) there was an established policy to deal with mineral lands separately and (b), because the specific inclusion of saline lands after the general grant in Section 8 evidenced an intention to exclude mineral lands, although the general grant was broad enough to convey both. This Court said:

> "As to the 110,000 acres, there is an express inclusion of saline lands. This silence as to mineral lands, when contrasted with the special inclusion of saline lands, indicates that the former are not included." *Cf. Montello Salt Co.* v. *Utah,* 221 U. S. 452, 466.

Read as a whole, there is ample internal evidence within the Act itself to indicate that it deals only with the rights of employees. Nowhere in the House Committee report quoted at length on page 47 of the Board's Brief appears any intention by the Congress to confer upon the Board the broad and doubtful power it now seeks. The interpretation proposed by the Board conflicts with the authorities cited and does violence to the familiar principle of construction "that specific terms prevail over the general." *D. Ginsburg & Sons, Inc.* v. *Popkin,* 285 U. S. 204, 208; *Missouri* v. *Ross,* 299 U. S. 72, 76.

C. Construed as nullifying the right of discharge for cause, or empowering the Board to compel employment of non-employees, the Act would contravene the due process provision of the Fifth Amendment.

It is a cardinal principle of statutory construction that, in the absence of explicit and compelling language, a stat-

ute should be construed to avoid any substantial constitutional question. *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298.

As formerly conceived, the due process clause of the Fifth Amendment protected the employer from any interference with or abridgment of his absolute right to select or discharge his employees. *Adair* v. *United States*, 208 U. S. 161; *Coppage* v. *Kansas*, 236 U. S. 1. There then followed increasing recognition of the coequal constitutional right of employees to band together for purposes of collective bargaining and to select their own representatives. Legislative prohibition of the exercise by the employer of his right of discharge for the purpose of striking down the employees' right of organization—but only when so properly limited—has been sustained by this Court. *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548; *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515. In both cases this Court was careful to note that the legislation did not "interfere with the normal exercise of the right of the carrier to select its employees or to discharge them."

This normal right has been subsequently defined by this Court in construing the present Act, to mean a discharge "for any cause that seems to it [the employer] proper, save only as punishment for, or discouragement of, such activities as the Act declares permissible." *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132. This view follows consistently the holding in *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330, 349, that "it is arbitrary in the last degree to place upon [the employer] the burden of gratuities to thousands who have been unfaithful and for that cause have been separated from the service, or have been for other reasons lawfully dismissed."

In both the *Associated Press* and the *Jones & Laughlin* cases, the reservation to the employer of the fundamental right of discharge for proper cause was emphasized by this Court to demonstrate that the Act was confined to constitutional limits. There was left the implication, necessarily required by the authorities, that an invasion of that right would contravene the due process provisions of the Fifth Amendment to the Constitution.

Admittedly the discharges in this case were for ample cause and in no respect as punishment for union membership or legitimate collective bargaining activity. The Board so held. The constitutional protection of the employer's right of discharge can be required to give way only to the extent that it collides with the employee's right of self-organization. *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway & Steamship Clerks,* 281 U. S. 548; *Virginian Railway Co.* v. *System Federation,* 300 U. S. 515; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1. Beyond that point of collision, however, neither the Congress nor the Board may abridge the right of discharge. The right of self-organization does not embrace a license to seize the employer's plant. The lawless occupation of plants whether or not accompanying a strike is not and could not constitutionally be safeguarded by the Act. Construed in the light of the restraints imposed by the Fifth Amendment, the Act clearly preserves the employer's right to discharge employees for cause, whether they be at work or on strike, and confers upon the Board no power to compel employment of former employees.

II.

The reinstatement provisions of the Board's order would defeat rather than effectuate the policies of the Act.

Apart from the question of power to order reinstatement of discharged employees, the Board's order can be justified only if it serves to effectuate the policies of the Act. The statute was designed to promote industrial peace by encouraging collective bargaining and to provide an orderly process for enforcing the employees' right to self-organization.[15] The reinstatement of discharged employees guilty of the property destruction and lawlessness portrayed in this record cannot advance either the immediate objective of peaceful collective bargaining or the ultimate end of industrial peace. Nor does the protection of collective bargaining rights warrant an order of reinstatement of (1) persons whose jobs were completely abolished in a *bona fide* internal reorganization, complete evidence of which appears in this record, or (2) persons who participated in no union activity and were unwanted because of inefficiency demonstrated in the record.

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[15] The Senate Committee report states that "the first objective of the bill is to promote industrial peace" and analyzes Section 1 of the bill as follows: "Section 1. *Findings and Declaration of Policy.* This section states the dual objective of Congress to promote industrial peace and equality of bargaining power by encouraging the practice of collective bargaining and protecting the rights upon which it is based." (Report 573 of Senate Committee on Education and Labor, 74th Cong., 1st Sess., pp. 1, 6.) The House Committee amended "the declaration of policy in order to emphasize the intent of the bill to promote industrial peace." (Report 1147 of House Committee on Labor, 74th Cong., 1st Sess., p. 9.)

A. The reinstatement of the participants in the sit-down strike, with its accompanying violence and property destruction, would defeat the policies of the Act.

The Board treats reinstatement of employees as of the time of the commission of an unfair labor practice as though it were synonymous with "effectuating the policies of this Act." Section 10(c). The *status quo* is usually restored so that the parties may engage in collective bargaining as if no unfair labor practice had occurred. However, the Board has itself recognized that intervening illegal activities by striking employees may render reinstatement an inappropriate measure for effectuating the policies of the Act.

This proposition was conceded by Judge Treanor in the following words:

> "In my opinion Petitioner is right in its contention that the authority of the Board in respect to affirmative action is limited to such action as will effectuate the policies of the Act. Consequently, it does not follow that the Board must reinstate all, or any employees, even though it properly finds that the employer has engaged in unfair labor practices and must, therefore, issue a cease and desist order" (R. 1995).

In the case at bar, the intervening conduct of the men and their consequent discharge makes impossible a restoration in fact of the *status quo*. The Board cannot brush aside and wipe out the property destruction, lawlessness and discharge, and treat the situation as if these events had never occurred. Nor can the Board insist upon reinstatement simply because it believes that otherwise the Respondent's unfair labor practice would go unremedied. To require reinstatement in the face of the physical inabil-

ity to recreate the situation existing on February 17th is to provide punitive measures for which there is no statutory authority. *Cf. Consolidated Edison Company* v. *National Labor Relations Board,* Nos. 19 and 25, decided Dec. 5, 1938.

The Board's selection of reinstatement as the remedy necessary to effectuate the policies of the Act, notwithstanding the intervening occurrences, rests upon two findings: (a) that Respondent's refusal to bargain on February 17th was "the moving cause for the conduct of the employees" (R. 1966); and (b) that the sit-down strikers remained qualified employees because their conduct did not amount to "sabotage" (R. 1967). The first is a conclusion which, if accepted, approves and endorses self-help as a means of redress. The second is a finding of fact for which there is no basis in the record and the Court below so held.

1. *The Board's justification of the sit-down strike is an endorsement of self-help in lieu of the orderly procedure provided by the statute. It can only engender industrial strife and unrest.*

The Respondent is charged by the Board with responsibility for the illegal plant seizure, the open defiance of the Courts, the violent resistance to the law enforcement officers and the wanton destruction of property perpetrated by the sit-down strikers on the simple ground that they would never have occurred but for the denial of recognition.[16] And this to carry out the policies of legislation designed to provide an orderly, democratic substitute for brute force. The Board's conclusion amounts to an approval of lynch law.

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[16] Admittedly the plant was seized without notice, warning or explanation (R. 1780). The Trial Examiner tried

As a dialectic aid in illogically fastening upon the Respondent responsibility for the plant seizure and the subsequent violence, the Board conveniently adopts the "strike" label. It is self-evident that, when applied to a plant seizure by employees, even though coupled with a cessation of work, this is a gross misnomer and a vastly misleading understatement. The Board's repeated references to the entire affair simply as a "strike," serves first to veil and finally to obliterate the illegal aspects of the sit-down. Deluded by its own expedient misuse of words, the Board treats the men's conduct as a peaceful cessation of work flowing as a natural consequence from an unfair labor practice.[17]

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repeatedly, and always unsuccessfully, to elicit testimony that if recognition were accorded Lodge 66, the sit-down strikers were willing to vacate the premises (R. 1504, 1511-2). At no time did the sit-down strikers offer to vacate the premises on condition that recognition be accorded and collective bargaining commenced. Nor was that position ever adopted by Lodge 66 (R. 1512). At the September meetings a check-off system and closed shop had been demanded (R. 1982). Whether the sit-down strikers desired to impose these or any other demands as conditions precedent to voluntary return of possession does not appear from the record.

With respect to the mediation efforts during the occupancy of the premises, the company's position was that the retention of the plant had been adjudicated illegal and that until possession was restored there was nothing to discuss (R. 1334). The Board's argument that the Respondent was willing to meet the strikers "only as ex-employees, not as members of a union, or a committee of the union" (Bd. Br. pp. 37-38) cites hearsay evidence (R. 1507) which the Trial Examiner struck from the record (R. 1513-4).

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[17] For an excellent example of the sacrifice of substance to labels, see Board's brief, p. 61, 36.

The Board ignores, as did the men who seized the Respondent's plant, the legal, orderly remedies available under the law. The statutory right of collective bargaining may be enforced either by a proceeding before the Board or by a peaceful strike. The Circuit Court of Appeals pointed out:

> "They had a complete and adequate remedy, without cost to them, at the hands of the Board, by the use of which they would have lost nothing in time or wages, if their cause were just. The employer had no coordinate right in this respect" (R. 1988).

Indeed, the men had already filed a charge of refusal to bargain which was then pending before the Board—a charge which was ultimately not sustained (R. 23, 1956). Without waiting for the outcome of their legal proceeding, the men took the law into their own hands. They determined to settle the matter by force and violence "according to their own sense of right" without regard to either the federal or the state laws. It is shocking that a quasi-judicial agency should now contend that the commission by an employer of an act, which upon subsequent hearing may or may not be determined to constitute an unfair labor practice, charges the employer with full responsibility for whatever violence, vandalism and lawlessness any of the employees may thereafter elect to use as a means of self-redress.[18]

Self-help, with force, has no place in organized society. Neither high moral purpose nor integrity of objective can condone or justify the substitution of violence for the

[18] Had, for example, the plant seizure occurred on September 10th, when recognition was refused by the Respondent, we take it that the Board would not place responsibility for the employees' lawlessness upon the Respondent in view of the Board's determination that Lodge 66 lacked a majority on that date.

orderly processes of government. Before the turn of the century, when sit-down strikes were as yet unknown, this Court said:

> "A most earnest and eloquent appeal was made to us in eulogy of the heroic spirit of those who threw up their employment, and gave up their means of earning a livelihood, not in defence of their own rights, but in sympathy for and to assist others whom they believed to be wronged. We yield to none in our admiration of any act of heroism or self-sacrifice, but we may be permitted to add that it is a lesson which cannot be learned too soon or too thoroughly that under this government of and by the people the means of redress of all wrongs are through the courts and at the ballot-box, and that no wrong, real or fancied, carries with it legal warrant to invite as a means of redress the cooperation of a mob, with its accompanying acts of violence." *In re Debs,* 158 U. S. 564, 598.

Courts have employed equally sharp language to denounce and condemn self-help in the form of the sit-down strike. In *Apex Hosiery Co.* v. *Leader,* 90 F. (2d) 155, 157 (reversed on other grounds, 302 U. S. 656), the Court said:

> "*The so-called sit-down strike was in fact not a strike.* If there had been a strike or any labor trouble at the plaintiff's factory, the law provides a remedy for its peaceful settlement. The main purpose of the Wagner-Connery Labor Relations Act, 29 U. S. C. A. §§151-166, was to avoid industrial strife by providing an orderly process of settling controversies and causes of unrest. It defines and declares the rights of labor and provides machinery for enforcing them.
>
> "Underlying this case is the question of whether a few lawless individuals ignoring and contemning the

Wagner Act and in defiance of all law and order, and in ruthless disregard of the rights of others should be permitted, by assuming the name of a Union, to deprive all others of their means of livelihood and compel them to contribute of their earnings to self-styled leaders. A few 'sit-downers' are keeping 2,500 persons who were entirely satisfied with their positions from working and from earning an honest living for themselves and their families. *If an employer had denied to labor any of its rights, the Wagner Act provided an orderly way of calling him to account.* Instead of resorting to this act, the defendants by force and violence sought to compel the employer and its employees to do what the Wagner Act does not countenance and what the judgment of every true friend of labor and of all good men condemns as wrong both in policy and principle." (Italics supplied.)[19]

Not content with having undertaken an illegal sit-down strike,[20] the men defended its use with an open defiance of

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[19] Cf. *Peninsular & Occidental SS Co.* v. *National Labor Relations Board*, 98 F. (2d) 411, 415 (C. C. A. 4th), *cert. den.* Dec. 12, 1938; *The Oakmar*, 20 F. Supp. 650, 651.

[20] The statutes of the State of Illinois declare to be illegal the violence and appropriation of the Respondent's property established by the record. Applicable provisions are as follows:

"Intimidation.

"§376. *By combinations, etc.*

If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing, by threats, suggestions of danger, or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500, or confined in the county jail not

the Courts and violent resistance to the law enforcement officers. So flagrant and deliberate was the lawlessness that the Chancellor imposed upon thirty-seven of the occupants of the buildings sentences ranging from a $100.00 fine and 10 days in jail to a $300.00 fine and 180 days in jail. Yet the Board orders the reemployment of all of these men.[21]

The Court below drew no distinction between the men occupying the plant and the fourteen aiders and abetters. All (save two) were not within the plant only because they were on the night shift and could not get through the gates (R. 674, 697-8, 708-9). These two had participated in the seizure but left the plant prior to the discharge announcement (R. 723, 748). The entire group came to

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exceeding six months. (Ill. Rev. Stat. State Bar Ass'n Div. 1937, Ch. 38, Sec. 376.)

§377. *Of workmen, etc.*

If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from obtaining work at any lawful business, or any terms that he may see fit, such person so offending shall be fined not exceeding $200. (Ill. Rev. Stat. Bar Ass'n Div. 1937, Ch. 38, Sec. 377.)

"§378. *Entering premises to intimidate.*

Whoever enters a coal bank, mine, shaft, manufactory, building or premises of another, with intent to commit any injury thereto, or by means of threats, intimidation, or riotous or other unlawful doings, to cause any person employed therein to leave his employment, shall be fined not exceeding $500, or confined in the county jail not exceeding six months, or both." (Ill. Rev. Stat. State Bar Ass'n Div. 1937, Ch. 38, Sec. 378.)

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[21] One of the men conceded on the witness stand that he did not expect compensation for the time he was serving in jail (R. 522).

the plant practically daily with supplies. Some were in the crowd outside the fence that injured and impeded the Sheriff's men in their efforts at eviction (R. 680, 712, 1773). Without the essential supplies and equipment which these men provided, with full knowledge of the injunction, no subsequent resort to force by the Sheriff would have been necessary and the sit-down strike would have terminated at once. These men were participants in the common undertaking just as directly as if they had occupied the buildings.[22]

The widespread acceptance of the sit-down strike as an industrial weapon of coercion demonstrates that the condonation of property seizures and destruction cannot encourage collective bargaining or promote industrial peace. The use, successfully and with impunity, of the sit-down strike in the General Motors plants pointed to a road quickly followed throughout the country. Indeed, even the consummation of a collective bargaining agreement did not discourage the use of the sit-down weapon on more than 30 occasions in the General Motors plants throughout the country. In these sit-downs alone, all subsequent to the collective bargaining agreement, 42,460 workers were involved, with a loss of 413,865 man-hours.[23] The union officials themselves have been unable to cope with the situation. Finally, that employer has been compelled to resort to discharges and the union

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[22] It may well be doubted whether union membership requires the furnishing of supplies to enable law violators to pour sulphuric acid on law enforcement officers. The deliberate purpose of the aiders and abetters cannot be questioned (R. 465, 711, 681, 1785). Several of them were in court at the time the injunction was issued and all knew of its existence (R. 679, 710, 785).

[23] New York Times, April 3, 1937.

has agreed to that effective method.[24] This and other similar experiences throughout the country contradict the Board's confidence that collective bargaining will eliminate the sit-down strike. Significant in this connection is the computation by the Department of Labor that 46.6% of the sit-down strikes of 1937 had nothing whatever to do with union organization matters but involved wage, hour and similar disputes in which the principle of collective bargaining was recognized. 47 Monthly Labor Review, 361-2 (August, 1938).

Nor can it be said that the decisions of this Court sustaining the validity of the Act with respect to production employees put an end to sit-downs as a notable factor in industrial relations. In important plants throughout the country, where *bona fide* collective bargaining is in force, the sit-down weapon continues to be used to resolve normal labor disputes.[25] By its very form, the sit-down strike

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[24] The situation had become so intolerable that the union was compelled to enter into a formal agreement providing that in the case of unauthorized strikes or stoppages—the most effective of which had been sit-downs—"the company will discharge or otherwise discipline the employe or employes known to be or found guilty thereof." Labor Relations Reports, Sept. 27, 1937, p. 7. Since that agreement the sit-down strikes still continued. See *infra* note 25.

[25] Nov. 1937. 24,791 workers involved in sit-downs in one month. 47 Monthly Labor Review, 361 (August, 1938).

Dec. 1938. Sit-down strike at the Detroit Plymouth Division of Chrysler. New York Times, Dec. 3, 1938.

Dec. 1938. Sit-down strike at the Nash Kelvinator plant in Kenosha, Wisconsin, in which 300 sit-down strikers forced 5,000 into idleness. Chicago Daily News, Dec. 5, 1938.

Nov. 1938. Sit-down strike at the Chevrolet Gear & Axle Division of General Motors in violation of a collective bargaining agreement. New York Times, Nov. 27, 1938. Chicago Daily News, Nov. 26, 1938.

enables a small group to throw the entire plant into idleness. If, in fact, responsible labor leadership is counselling the abandonment of the sit-down weapon, there is no occasion to instill new life into its use by protecting the participants from proper discharge. The guarantee by a federal agency of economic security to workers seizing plants was certainly not contemplated by the Congress as necessary to effectuate the policies of this Act.[26]

2. *The reinstatement of discharged employees guilty of violence and property destruction cannot effectuate the policies of the Act.*

The reinstatement of strikers guilty of extreme violence would demoralize the operation of an employer's business and encourage rather than discourage interruptions of production with the consequent burdens on commerce.

Sept. 1938. Sit-down strike at the Briggs Manufacturing Company plant at Detroit, involving 12,000 men. Chicago Daily News, Sept. 29, 1938.

Sept. 1938. Sit-down strike at the Armour plant in Kansas City, involving 1800 men. Chicago Daily News, Sept. 10, 1938.

May, 1938. Sit-down in the Seaman Body Corporation plant at Milwaukee in which 28 sit-down strikers threw 4,500 employees out of work. Chicago Daily Tribune, May 21, 1938.

May, 1938. Sit-down in Chevrolet Motors parts plant, Bay City, Michigan, throwing 1200 men out of work. New York Times, May 4, 1938.

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[26] The old board (Section 2(11) of the Act), headed by Senator Wagner, the author of the present act, repeatedly held that an employee's violence or lawlessness during a strike was sufficient to bar his reinstatement notwithstanding the employer's unfair labor practice. *In re National Lock Company*, No. 52, decided Feb. 21, 1934; *In re American Stores*, No. 239, decided June 29, 1934; *In re Eagle Rubber Company*, No. 219, decided May 16, 1934.

The Board has itself given recognition to that proposition by denying reinstatement in certain cases. Such denials are cited in its decision here (R. 1967). No standard of permissible conduct is, however, supplied by the Board. By a sketchy and partisan review of the evidence, the Board arrives at the conclusion that the conduct of the sit-down strikers and those aiding and abetting in their lawlessness was not sufficiently reprehensible to deny them reinstatement.

There was no dispute in the testimony as to what occurred. The men whose reinstatement the Board found necessary to accomplish the legislative purposes are admittedly guilty of indefensible coercive activities. The record discloses in respect of these men:

1. The forcible seizure of the plant and the defiant refusal to surrender possession.

2. The open disregard of the injunctional order entered after a full hearing in court.

3. The violent resistance to the Sheriff on two occasions when he sought to enforce the court writs. In both instances sulphuric acid and the heavy tools with which the men worked were freely employed as deadly weapons.

4. The burning and wounding of law enforcement officers by the sit-down strikers' barrage.

5. The wanton destruction of portions of the buildings, tools and inventory and other damage aggregating more than $60,000.00.

These criminal and destructive tactics are dismissed in the Board's brief with the casual statement that there was

no "sabotage" (R. 1967). In this connection, the Circuit Court of Appeals said:

> "It is further suggested by respondent, we suppose by way of mitigating circumstances, that the men were not engaged in sabotage, and that no malicious sabotage of equipment occurred. Both of these findings were made, and we think neither was supported by substantial evidence. Indeed, the contrary was supported by undisputed evidence." (R. 1989).

The Court thus expressly overruled the Board's findings of fact with respect to the quality of the men's conduct which served as the basis for the order of reinstatement. Reinstatement cannot obviate the lawlessness or restore the destroyed property. By taking the law into their own hands, the men have erected an insurmountable obstacle to effectuating the policies of the Act by an attempted restoration of the *status quo*.

Neither the nature of the sit-down strikers' conduct nor the finding by the Circuit Court of Appeals that it was intentional and malicious is contested. Such deliberate lawlessness disqualified the participants as suitable employees. The Respondent had ample grounds for its apprehension that their employment would engender plant disharmony and strife. Its adherence to the discharge rests upon a firm foundation.

True the Board can impose no punishment upon the sit-down strikers. Nor can it, on the pretext of leaving correction to state authorities, close its eyes to the employees' misconduct and freely override the well-deserved discharge. No more unfailing formula for fomenting and intensifying plant demoralization and resort to violence is conceivable.

In exercising its discretion, the Board gave excessive and controlling weight to the fact that the Respondent reemployed certain of the sit-down strikers, ignoring thereby the entire record of violence and property destruction.[27] It did so upon the theory that by reemploying certain of these men the Respondent admitted that *all* sit-down strikers were qualified and that accordingly its argument to the contrary was not put forward in "good faith." (R. 1967). Such inferences have no evidentiary basis; they are completely contradicted by the record. The Respondent's position has never been in doubt; it accepted applications for reemployment only from those believed to have been coerced and intimidated into remaining within the buildings. On February 26, 1937, within a few hours after the sit-down strikers were ousted from the plant, the Respondent's President issued a public statement in which he said:

> "All of the men who participated in the sit-down strike were discharged by the company. It has been the company's consistent belief that more than half of the eighty men who participated in the seizure of the plants were compelled to do so through coercion and intimidation. Applications for reemployment from such men will receive favorable consideration.

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[27] Instructive on such technique is *National Labor Relations Board* v. *Union Pacific Stages, Inc.*, 99 F. (2d) 153, 176, where the Court said:

> "Because the discharged drivers admittedly were guilty of infractions of the respondent's rules and regulations the Board has sought to show that these breaches were trifles and that the real reason for the discharges was the union activities of the drivers. It thus ignores or minimizes the violations and bases its order on what is referred to as 'background', which we have shown is not correctly presented or rightly interpreted and therefore not to be relied upon."

> "We cannot condone the defiance of the courts or the resistance with violence to the enforcement of the law. For the men who participated in such unlawful activities, there can be no place in our plant." (R. 1336).

Providing a basis for Respondent's judgment were the escape of a number of men from the barricaded buildings and the campaign of coercion and intimidation which preceded the plant seizure (R. 1765). In conformity with Respondent's announced policy, twelve of the men who had been coerced into remaining in the buildings and who had managed to escape, were rehired (R. 1772-3, 1784, 1159).[28] Twenty-three others likewise believed by the company to be in the category of unwilling or lessor participants, were similarly rehired. Reemployment was preceded in each instance by a new application and an interview with the plant superintendent who obtained assurance that the lawlessness would not be repeated (R. 1239). No conditions as to the Union membership or collective bargaining were imposed in connection with the reemployment (R. 1216, 1282-3).[29]

Of the thirty-five rehired, the board points to four men rehired as having actively participated in the violence (Bd.

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[28] Illustrative of the restraint to which some of the men within the plant were subjected, are the cases of Oseneck, who slipped out of a window (R. 1159, 1167) and Simonson, who was "permitted" to go to the bedside of his sick wife only after the Vice-President and Secretary of Lodge 66 had, through window conversations, assured themselves that he was not deserting (R. 1177-78).

[29] The Board's repeated assertions to the contrary are made without record citation or finding in the Board's decision and are directly contrary to the record facts. Respondent's affirmative evidence was not denied by any of the Board's witnesses testifying on the subject (R. 456, 452-3, 460-1, 542).

Br. 52n). The fact is that the story of what occurred within the buildings was not fully unfolded until the public hearing before the Circuit Court of Lake County and the subsequent hearing before the Trial Examiner three and one-half months after the above quoted statement and the plant superintendent's interviews with the men reemployed. Indeed, dependent as the Respondent was at the time of the reemployment upon the statements of the men themselves, and facing the necessity as it did of immediately remanning its plant, it is a tribute to the Respondent's diligence that only four of the thirty-five reemployed were ultimately shown to have been active in the violence. More than a third of the rehired participants had escaped during the sit-down. Believed by the Respondent to be typical of the unwilling participants in the plant seizure are men like Osenek and Simonson who refrained from violence and protested against the use of acid (R. 1177, 1175, 1162, 1164).[30]

In view of Respondent's public statement that applications for reemployment for those coerced would receive favorable consideration and that there was no place in the plant for the other participants in the lawlessness, it is not surprising that Respondent was able after interviews to rehire most of the men who made application.

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[30] Simonson testified that he protested against the use of acid because "it was marked 'Poison' and I was afraid it would cripple somebody for life" (R. 1177). He also testified that he broke no windows and threw no missiles (R. 1175).

Osenek testified on cross-examination that he threw no acid or other missiles and destroyed no property (R. 1162, 1164).

Even Germer (one of those whose reemployment is mentioned in the Board's Brief, p. 52n to show Respondent's insincerity) testified that he and others hid acid to prevent its being thrown at deputies "on account of injuries to the eyes and skin" (R. 1173).

Those conspicuous in the violence realized it was futile to apply.[31]

Throughout the brief and particularly to demonstrate the propriety of the reinstatement order, counsel for the Board insist that "only those who would surrender their right to bargain through the Union as their representative were permitted to return" (Bd. Br. p. 50). No record citation for that assertion appears anywhere in the Board's brief and indeed, the testimony of every witness on the subject is to the contrary. *Supra,* p. 11n. The testimony of the Board's own witnesses respecting offers of reemployment uniformly disclosed no condition either as to union membership or collective bargaining (R. 456, 452-53, 460-1, 542). The Board dismissed the allegation of discrimination in reemployment and made no finding that either the reemployment or any offer was conditioned in any respect (R. 1969, 1959). Were such conditions imposed, a holding of discrimination would have been made. *In the Matter of Carlisle Lumber Co.,* 2 N. L. R. B. 248, 265-6. The record facts dispose of the Board's contention

[31] There is no record basis for the Board's statement that the Respondent "actively solicited 53 of the sit-down strikers to return" (Bd. Br. p. 50). The Board apparently includes the 35 who voluntarily returned, in many cases without solicitation, as well as those talked to by brothers, apprentices and other unauthorized persons (R. 634, 618, 458, 810-11, 822).

Compensation for the period during which the plant was closed was paid by the respondent upon the theory that most of the employees including those of the subsidiary Vascoloy-Ramet Corporation had been "prevented from making a day's pay by no act of their own" (R. 1333). Announcement of such back pay was enclosed in current pay envelopes of employees and was not inserted as a notice (Bd. Br. p. 51n), but copied as a news item by the local newspapers. It is uncontradicted that the purpose was to compensate those who suffered without fault—not to attract the return of sit-down strikers (R. 1333, 1705).

that in requiring reinstatement of all sit-down strikers the Board's order was merely removing the unlawful conditions set up by the Respondent. There having been no such discriminatory barriers in fact, there are none to be torn down.

Finally, it is urged that only through reinstatement can the employee's "confidence in the procedure of the Act" be restored (Bd. Br. pp. 59-60). In the absence of reinstatement, counsel suggest "the procedure of collective bargaining will continue to be regarded by the employees as one which can be sought only at the risk of their jobs" (Bd. Br. pp. 59-60). Counsel forget that these particular men had no "confidence in the procedure of the Act". Spurning the statutory procedure, they elected instead to take the law into their own hands, and that, it must be conceded, they did "at the risk of their jobs". The sit-down strikers were not discharged for collective bargaining (R. 1989, 1990). Until the sit-down strike, not a single employee was discharged, disciplined or even threatened by reason of union membership or concerted activities (R. 1593, 280, 436, 361). Reinstatement would not restore confidence in the "procedure of the Act", which the men rejected, but rather in the sit-down strike to which they had resorted as a coercive aid to collective bargaining.

B. The reinstatement of persons (1) whose jobs have been abolished, and (2) who are shown to have been inefficient, cannot effectuate the policies of the Act.

The order of reinstatement completely disregards the following uncontested facts fully established upon this record: *first*, that in a *bona fide* reorganization, thirty-nine jobs, some of which had formerly been occupied by sit-down strikers and some by others ordered reinstated, had been

completely abolished; and *second*, that upon grounds of inefficiency, Respondent objected to the reinstatement of seven individuals whose membership in the union was unknown to the Respondent and who had not participated in any union activity.[32]

The factual soundness of that position has never been challenged by the Board. The *bona fide* character of the internal reorganization and the inefficiency of the seven individuals in question are not denied in the Board's decision or findings. The Board dealt with these two groups by directing Respondent to reinstate all of the men and women involved and then to carry out a new internal reorganization, discharging those for whom there were no jobs or who were inefficient (R. 1967-8). All three judges of the Circuit Court of Appeals agreed that the Board was wholly lacking in statutory power to make such an order.

1. *Reinstatement of former occupants of abolished jobs is unwarranted.*

Neither in its decision nor the brief does the Board manifest an understanding of the nature of the reorganization. Here was no mere reduction in the number of employees doing the same work in the same department—three entire departments were eliminated.

Respondent had long recognized that specific economies in its operations could successfully be introduced (R. 1184, *et seq.*). It entertained, however, a natural reluctance to

[32] There is also a miscellaneous group of seven, including a foreman discharged after the strike, three who joined the union after their discharge for inefficiency, and the like (R. 467-8, 1217-25, 1897, 1905, 1283). The facts with record citations with respect to each are set out in the appendix.

disrupt the organization. The interruption in operations resulting from the plant seizure provided an opportune occasion for a comprehensive reexamination and readjustment of the plant. Unnecessary functions and those which could better be performed by independent contractors were discontinued. These and other changes were fully outlined in the evidence (R. 1184-1192). In view of the undisputed evidence, it is an abuse of discretion to order reinstatement of the occupants of the jobs which no longer exist.

Experience over a period of years had demonstrated that a large maintenance department was an expensive luxury (R. 1184). Accordingly, the maintenance department of fifteen men was eliminated and a repair crew consisting only of a millwright, an electrician and two helpers was substituted. Independent contractors have, since the reopening of the plant, been employed for all substantial construction work with a marked reduction in cost (R. 1190). Similarly, the manufacture of standard dies was completely discontinued. By purchasing such dies in quantity from plants especially equipped to produce them in mass production, large savings have been effected (R. 1192). The jobs of two elderly men (74 and 76 years of age, respectively) in the toolroom were combined and taken over by one young man (R. 1297-9).

In the contact point industry, Respondent's principal competitors had for some time employed women in cutting, spinning and grinding work. As a consequence, they enjoyed lower costs and competitive advantages. Many months prior to the sit-down strike, the Respondent had been advised by experts to take steps to meet this competition (R. 1185). Accordingly, upon the reopening of its plant, the Respondent employed women to do the cutting, spinning and grinding work in lieu of sixteen men who had previously performed such functions. Substantial savings resulted not merely from the lower wages paid to

women but because they turned out a better product, reduced waste and eliminated a portion of the inspection and cutting wheel costs (R. 1185-90; 1830). Notwithstanding the inexperience of the women in the initial months, savings approximating fifty per cent were disclosed (R. 1185-90, 1830). The women's work has been of such high caliber as to establish improved standards and make unnecessary the replacement of two contact inspectors who failed to return and have now been ordered reinstated (R. 1291).

In restoring the *status quo*, the Board may only remedy that injury worked by the unfair labor practices of the employer. It has no power to nullify the changes effected by normal management action or economic forces. As Judge Hutcheson pointed out in *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509, 514 (C. C. A. 5th), "the Board has no authority to order the employment of three men for two jobs." In accord is *Black Diamond S. S. Corp* v. *National Labor Relations Board*, 94 F. (2d) 875, 878 (C. C. A. 2nd), *cert. den.* 304 U. S. 579. In the Court below, Judge Treanor joined with the majority in setting aside this portion of the Board's order, saying:

> ". . . there is no provision in the Act which purports to qualify the right of an employer to abolish unnecessary jobs either during the pendency of a labor dispute or after the commission of an unfair labor practice by an employer. In short, the National Labor Relations Act . . . does not protect striking employees from disadvantages which result from normal management action taken by the employer during the time the striking employees voluntarily refuse to work." (R. 1998).

The explanation offered by the Board is that the order is designed to spread the work fairly between those who remained at work and those who went on strike. No attention is paid to the fact that there was no mere contrac-

tion of work. It was not a case of reducing the number of people doing the same work. In respect of at least thirty-five of the thirty-nine jobs abolished, the functions of those jobs are today nowhere performed by the Respondent. The order of reinstatement of the former occupants of these abolished jobs would compel a perfectly futile act, produce confusion and further industrial strife and doubtless additional proceedings before the Board. The record is complete on this subject and the entire question should have been disposed of by the Board in its order.

None of the authorities cited by the Board deal with the problem of reinstatement of persons whose jobs were abolished, nor do they sustain the present form of order. The crux of *National Labor Relations Board* v. *MacKay Radio & Telegraph Co.*, 304 U. S. 333, appears in the following language of the opinion (at 347):

> "The Board found, and we cannot say that its finding is unsupported, that, in taking back six of the eleven men * * * it [the employer] might have resorted to any one of a number of methods of determining which of its striking employees would have to wait because five men had taken permanent positions during the strike, but it is found that the preparation and use of the list, and the action taken by the Respondent, were with the purpose to discriminate against those most active in the union."

That decision rests not on the availability of jobs but on the discrimination in reinstatement. In our case the allegations of discriminatory discharge and discriminatory reinstatement were dismissed by the Board.[33]

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[33] Also cited by the Board is *National Labor Relations Board* v. *Hopwood Retinning Co. Inc.*, 98 F. (2d) 97 (C. C. A. 2d). While the form of order is there substantially similar to the one in the present case, there was no issue involving abolished jobs or the reinstatement of persons for whom there was no work. The subject is not even mentioned in the opinion of the Court.

2. *The order of reinstatement of the employees shown to be inefficient was improper.*

In connection with the internal organization, Respondent abolished piece rates which had prevailed in some departments and established an hourly basis of compensation throughout the plant (R. 1189, 1260). At the same time, the foremen were requested to reconsider the efficiency of all employees in order that a properly functioning plant might be reopened (R. 1189, 1213, 1260, 1280). Upon the basis of recommendations of the respective foremen, the Respondent objected to the reinstatement of seven employees upon the ground that they were inefficient (R. 1261-2, 1280-2). Ample evidence of the inefficiency was introduced not only by testimony of the supervisory employees, but by production records as well.[34] Nor was it disputed that this group took no part either in the sit-down strike and picketing or in any other Union activity (R. 763-4, 766-7, 783, 821, 772, 1057). Equally clear is the fact that neither the Respondent nor any member of the management knew

[34] For example: Joan Bissonette's work was 25 to 50 per cent below the average (R. 1270, 1276-7). Her successor, an apprentice, did 40 per cent more work (R. 1292).

Fern Gartley's production rate was 40 per cent below the high and 25 per cent below the average, and 50 to 65 per cent below the production rate on the same job after the reopening of the plant (R. 1270, 1274-6).

Marguerite Seifert's production rate was 10 to 15 per cent below the average and a much larger per cent below the rate achieved upon the reopening of the plant (R. 1269, 1276).

Vivian Johnson's production rate on half of her work was 40 per cent below the average (R. 1270, 1273-4).

The work of the other three, Gramer, Fellens, and Hoff, did not lend itself to production records, but their supervisors testified to their inefficiency (R. 1261-2, 1298-9, 1897).

that these people were members of Lodge 66—indeed, the same supervisors testified that many of those returning to their departments were members of Lodge 66 (R. 1262, 1282-5, 779, 821, 1048).

These facts are not questioned in the Board's decision. The Board announced that it would not "concern" itself with the matter and, after reinstatement of these people, the Respondent could discharge such of them as efficiency considerations required. All of the evidence was in the record and it was incumbent upon the Board to make specific findings—the speculations of counsel (Bd. Br. p. 63) do not provide an adequate substitute.[35] To reinstate and then discharge can certainly not promote plant harmony or in any way facilitate collective bargaining. This Court has stated clearly that strikers may be refused reinstatement "on the ground of skill or ability". *National Labor Relations Board* v. *MacKay Radio & Telegraph Co.*, 304 U. S. 303, 347.

A reading of the Act reveals that it

> "was not intended to empower the Board to substitute its judgment for that of the employer in the conduct of his business. * * * It did not authorize the Board to absolve employees from compliance with reasonable rules and regulations for their government and guidance. The Act does not vest in the Board managerial authority." *National Labor Relations Board* v. *Union Pacific Stages, Inc.*, 99 F. (2d) 153, 177.

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[35] Although the Board's findings do not challenge the inefficiency of this group, counsel seek to raise some doubt by showing that all received pay raises shortly before the strike (Bd. Br. p. 63). What they neglected to add was that these were part of a general plant-wide raise given to everyone without regard to individual efficiency (R. 770-1, 439).

C. There is no statutory authority for the back pay provisions of the Board's order.

The Board found that the individuals named in the complaint had never made application for reinstatement or reemployment (R. 1962). The Board's order directs that in the event such application be made in the future, it should be honored by the Respondent. To induce compliance and discourage appeal to the Courts, the order further provides that if the application be made and denied, back pay shall accumulate. By this device, the Board has actually proposed a penalty for seeking judicial review of its order. That it is powerless to do. In *Meyers* v. *Bethlehem Ship Building Corp., Ltd.*, 303 U. S. 41, 48, this Court emphasized the Board's lack of authority to apply any sanctions, saying:

> "The grant of that exclusive power is constitutional, because the Act provided for appropriate procedure before the Board and in the review by the Circuit Court of Appeals an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board. No power to enforce an order is conferred upon the Board. To secure enforcement, the Board must apply to a Circuit Court of Appeals for its affirmance. And until the Board's order has been affirmed by the appropriate Circuit Court of Appeals, no penalty accrues for disobeying it."

The present back pay provision is entirely different from the normal provision approved in the authorities cited by the Board. The normal purpose of a back pay order is to remedy an employer's refusal to reinstate, but here the Board found there had been no application for reinstatement. Any refusal thereafter, was, in effect, nothing more

than a failure to comply with the Board's order. Moreover, with respect to the persons whose jobs had been abolished or who were shown to be inefficient, the Board's order proposes that upon application, these people be reinstated and immediately thereafter may be discharged. Had the Respondent complied with that order by reinstating the persons whose jobs were abolished or were inefficient and then exercised its unquestioned right immediately to discharge them, not a single penny of back pay would have accrued. Having elected, however, to avoid the confusion and demoralization of its personnel and to appeal the order to the courts, it is subjected to a rapidly mounting monetary risk. A more effective discouragement of resort to judicial protection can scarcely be conceived.

III.

Lodge 66 does not represent a majority of the employees in the appropriate unit and both the negative and affirmative provisions of the order requiring its recognition are invalid.

Upon the premise that Lodge 66 represented a majority of the employees on February 17, 1937, the Respondent is now ordered to recognize that union as the exclusive bargaining representative of all of its employees. While the Board's brief treats separately the cease and desist and the affirmative provisions of the order, both must stand or fall together. There is clearly no distinction between the injunction to cease and desist from refusing to recognize Lodge 66 and the mandatory direction to recognize Lodge 66.

The Court below held that the elimination from the rolls of the dismissed employees had completely dissipated

any majority that Lodge 66 might have enjoyed on February 17th. The opinion states:

> "This being true, the occupants of the building who were discharged on February 17 were no longer employees of the petitioner, and none of them sustained that relationship again until they were reemployed. Hence there was no longer a majority of petitioner's employees who were members of that union, and the finding to the contrary is not supported by any evidence.
>
> "It is urged by the Board that the commission of a crime by strikers does not preclude their right to bargain with petitioner. This we admit, provided they still are employees and represent a majority of all. What we hold is that there was just cause for discharge, it was exercised, and those who have not been re-employed are not employees and were not at the time of the finding and order of the Board. The present employees still have their rights of bargaining without interference of the petitioner, and these may be enforced upon proper procedure" (R. 1989).

The "proper procedure" suggested by the Court is obviously an election reflecting the current desires of the present employees rather than those expressed more than two years ago, principally by men who have ceased being employees.

The explanation offered by the Board for its order is that a majority having been established on February 17th, Lodge 66 must continue to enjoy a "presumptive authority" to render the Act "workable." Cited for that view is *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 869 (C. C. A. 2d). In that case there was no evidence of loss of membership—merely

the lapse of a long period of time. It was upon that basis that the Second Circuit Court of Appeals said:

> "However, that was nearly two years ago, and it is possible that the Joint Board will no longer represent a majority of the men, even after those who struck are restored to their jobs, as later sections of the order provide. *The membership of a union is constantly changing, and it may at any time cease to represent the majority;* if it does, it loses its power to bargain for the unit." (Italics supplied.)

The loss of a majority having been affirmatively established in this case, the Court properly rejected any presumptions and gave effect to the record facts. Cf. *In the Matter of Benjamin Fainblatt*, 4 N. L. R. B. 596, 600-601.

The Board counters with a statement that if, in fact, Lodge 66 represents less than a majority today, "that result is directly attributable to Respondent's violations of the Act" (Bd. Br. p. 70). It is a complete answer that, had the men employed either of the lawful means at their disposal, namely, a peaceful strike or a proceeding before the Board, there would have been no discharge and the union's majority would have remained unimpaired. Responsibility for loss of majority must rest squarely upon the men.

The entire defense of the cease and desist provisions relating to recognition—as distinguished from the affirmative order of recognition—rests upon a misapprehension of the terms of the Board's own order. In Section 1(c) Respondent is ordered to

> "(1) cease and desist from • • •
>
> (c) refusing to bargain collectively with Amalgamated Association of Iron, Steel & Tin Work-

> ers of North America, Lodge 66, as the exclusive representative of its hourly paid employees . . . " (R. 1970)

In Section 2(a) the Respondent is ordered to take the following affirmative action:

> "(a) upon request bargain collectively with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of its hourly paid employees . . . " (R. 1970)

Although there is no difference between these provisions, the Board contends that the cease and desist section must be enforced notwithstanding the loss, by Lodge 66, of its majority. The point is made that from a refusal to bargain with Lodge 66 on February 17, a cease and desist order must follow as a matter of course. That position, were it taken in connection with a general order to cease and desist from violating section 8(5) of the Act, would be understandable. But this is not the order in this case. Although couched in cease and desist language, it affirmatively commands the Respondent to recognize Lodge 66 as the exclusive bargaining agency. For such command, there is no authority in the absence of a present majority.

The distinction between negative and affirmative orders is more than formal. A cease and desist order issues upon proof of an unfair labor practice. Affirmative action, however, may be ordered by the Board only when it serves to effectuate the policies of the Act. Section 10 (c). The Board cannot escape the statutory limitation upon an affirmative order, by casting in the mold of a cease and desist order, a mandatory instruction to take affirmative action. But that is precisely what the Board has done in this case. Section 1 (c) of the Board's order (the cease

and desist provision) is identical with section 2 (a) (the affirmative provision). The Court below clearly could not strike the one without eliminating the other. Phrased as they are, and even assuming a refusal to bargain on February 17, 1937, both require for their validity, a present majority.

IV.

The order to cease and desist from violation of Section 8(2) and the order of disestablishment of Rare Metal Workers of America Local No. 1 are not supported by the evidence.

The independent union, Rare Metal Workers of America, is denounced by the Board as an instrumentality of the employer. The decision contains a general finding that Respondent has "dominated, and interfered with the formation and administration of the R. M. W. A. and has contributed support to it" (R. 1965). The record is wholly barren of any evidence to sustain the finding of domination and interference and there is no substantial evidence of support.

The evidence upon which the Board expressly rested its finding was as follows:

> (1) Failing in their efforts to obtain a public hall, the organization committee requested and was permitted the use of vacant space in a deserted company building just outside the plant grounds for the initial organization meetings. The inability to obtain outside halls was due to the feeling in the community and fear of violence on the part of the hall owners (R. 977, 979).
>
> (2) The committee was permitted to mimeograph its initial meeting notices and bulletins on company mimeograph machines, and post the notices on bulletin boards on two occasions.

(3) During a lunch hour ballot boxes for the election of officers were set up in building lobbies, members of the union voted on their own time and the union was given leave to store the ballots in the company's vault.

The undisputed evidence to which the Board gave no weight whatever, included the following:

(1) No member of the supervisory staff played any part in the organization or conduct of the Union (R. 921, 1018, 1020-22). The uncontradicted testimony that there was no interference or control by the management (R. 1320, 1325, 1326).

(2) The formation of a shop union had been the subject of general discussion among the workers (R. 1020). While some expressed a preference for affiliation with the American Federation of Labor (R. 1021), a majority determined to establish an independent Union, voting by secret ballot at their own meeting which no member of the management attended (R. 921, 932-3, 965, 1008, 1011).

(3) Every expenditure for the union's benefit (including the costs of the corporate charter, payment for meeting halls, and the like) was accounted for from its own funds obtained from dues; it received no financial support from the Respondent (R. 1320, 1851-55).

(4) The men retained as their own counsel the "family lawyer" of the temporary president, and he prepared the original membership petitions (R. 937-8).[36]

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[36] Contrary to the record, the Board's Brief suggests that the attorney "did not charge for his services", drawing an improper inference therefrom (Bd. Br. p. 75). The testimony showed that the union expected to pay for the attorney's services, but that he was waiting to complete the work before submitting a bill (R. 938).

(5) The workers drafted their by-laws entirely themselves (R. 1029).[37]

(6) The Union acted promptly to elect officers and trustees who immediately entered upon bargaining negotiations (R. 1002).[38]

(7) Although the production employees voted overwhelmingly to establish the independent union, recognition was not accorded until six weeks thereafter—and then only after two demands and proof of a majority (R. 1002-5).

(8) No members were solicited or dues collected during working hours. Everything in connection with the organization of the Union was done on the workers' own time (R. 958, 918, 942).

(9) The management exerted no influence or coercion, directly or indirectly, to swell the Union's rolls (R. 920, 921, 955-7, 985, 988-90, 1018, 1020). Employees who refused to join were not threatened, disciplined, discharged, or even approached by any member of the supervisory staff (R. 985-6, 990).

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[37] From the fact that the by-laws require a 75 per cent vote to call a strike or affiliate with a national organization, the Board again draws an inference of employer domination. The requirement of a large majority for extraordinary action is common both in unions and other organizations. United Automobile Workers of America requires a two-thirds vote of local members and approval by the international officers for any strike (New York Times, May 11, 1938, p. 3). In any event, that fact is clearly irrelevant, since the Respondent had no part in the preparation of these by-laws (R. 1029).

[38] The Board's Brief suggests that the president was a strike-breaker, hired from the National Metal Trades Association (Bd. Br. p. 76). The Board's decision makes no such finding. The permanent president, Griffith, was one of the old employees (R. 927).

These facts are drawn from the mouths of the Board's own witnesses. With its unlimited powers of subpoena and investigation, the Board was unable to produce a single witness to testify that his adherence to the Union had been in any way contrary to his own free will. *Not a single instance of interference or domination is cited in the Board's decision and there is none in the evidence.* Counsel for the Board have deliberately disregarded both the findings of the Board and the record, in the following gratuitous statements:

> "The R.M.W.A. has obtained its members and its conduct has been directed by respondent's influence. Its policies, and its officers, have been shaped by respondent's influence and with a view to respondent's approval" (Bd. Br. 82).

No such finding was ever made by the Board and all of the evidence, principally adduced from the Board's own witnesses, is specifically to the contrary (R. 920, 921, 955-7, 985-6, 987, 990, 1018, 1020, 1320, 1325, 1326). These wishful conclusions of counsel reveal precisely the type of evidence necessary to sustain the Board's order and conspicuously lacking. We are not concerned with a mere conflict of evidence; the record is barren of any. The order has no "basis in evidence, having rational probative force." *Consolidated Edison Company* v. *National Labor Relations Board*, Nos. 19 and 25, decided Dec. 5, 1938.

To meet the lack of substantial evidence, the Board relies upon the fact that the independent union did not experience the same resistance that confronted Lodge 66. From an absence of hostility or mere passivity on the part of the Respondent, the Board infers that it dominated,

interfered and supported.[39] It is clear that the findings of interference and domination require more affirmative evidence. It must be of such a nature as to corrupt or override the will of the employees. Controlling on this subject is this Court's opinion in *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 568:

> "* * * The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. *Noscitur a sociis. Virginia* v. *Tennessee*, 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse

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[39] The failure to extend the privilege of the bulletin board to Lodge 66 in the summer of 1936 is criticized as hostility, and the granting of the identical privilege to the Rare Metal Workers of America in the spring of 1937 is condemned as domination (R. 1965).

If, in fact, there was a change in the Respondent's attitude from the summer of 1936 to the spring of 1937, that would be perfectly natural. This Court had changed the prevailing constitutional opinion as to the applicability of the Act, theretofore expressed by the Circuit Courts of Appeal and admittedly entertained by the Respondent (R. 258). The Board was unable to point to any contemporary discrimination between "inside" and "outside" unions; sixty-one members of Lodge 66, including officers and members of the bargaining committee, were unconditionally reinstated or reemployed (R. 1339; 1212-13).

> of relation or opportunity so as to *corrupt or override the will,* and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress and undue influence. If Congress intended that the prohibition, as thus construed, should be enforced, the courts would encounter no difficulty in fulfilling its purpose, as the present suit demonstrates." (Italics supplied.)

The lack of opposition to the inception and formation of the independent union can under no circumstances be characterized as "pressure" or "the abuse of relation or opportunity so as to corrupt or override the will."

Referring to evidence of support similar to that here relied upon by the Board, the Court of Appeals for the Second Circuit held, in *Ballston-Stillwater Knitting Co.* v. *National Labor Relations Board,* 98 F. (2d) 758, 760, that the Court is not "bound to accept findings based upon evidence which merely creates a suspicion or gives rise to an inference that cannot reasonably be accepted." In that case petitions for an independent union were distributed throughout the plant on company time. The organization meeting of the independent union was held during working hours and employees were paid for the time of attendance. In reversing the Board's finding of domination, interference and support, the Court said (at page 761):

> "This is not the case of a 'company union' whose formation was initiated by the employer in order to combat the efforts of an outside union to organize his employees. The testimony is uncontradicted that the officers of the petitioner had no hand in establishing the Association. It is true, as the Board found, that

> the chief reason for its formation was to keep out the CIO, but the plan of an 'inside' union was apparently the spontaneous reaction of a group of the employees, who circulated their petitions, got up their own meetings, engaged their own attorney to draft the constitution and by-laws, and paid their expenses, without suggestion or help by the petitioner. Concededly the petitioner made no financial contributions. * * *"

That authority fortifies the conclusion that in the slender threads of "support" there is no substantial evidence that the employees' freedom of choice was corrupted or destroyed.

The Board's assertion that the findings of domination, interference and support had been sustained by the Court below is incorrect (Bd. Br. p. 73). The opinion found that there was substantial evidence "to support the finding that petitioner contributed support to the organization of Rare Metal Workers of America, Local No. 1 in violation of the literal interpretation of section 8 (2)." The Board's finding of domination and interference are nowhere sustained in the Court's opinion. As to support, the evidence is too scant to warrant even the Court's qualified approval.

The drastic remedy of disestablishment prescribed in the Board's order is defended as "the necessary concomitant" of the requirement that the Respondent bargain with Lodge 66 as the exclusive representative of its employees. As we have already seen, the latter portion of the order imposes upon the employees a bargaining agency they did not select. After noting the loss by Lodge 66 of its majority through valid discharge and defection, the Court below pointed out:

> "The present employees still have their rights of bargaining without interference of the petitioner, and these may be enforced upon *proper* procedure." (Italics supplied.) (R. 1989)

That "proper procedure" would be an election conducted by the Board. If there were any basis for the Board's findings, the withdrawal of recognition would be a sufficient and appropriate remedy. The disestablishment restrains the employees from any possibility of selecting their own creature as their bargaining representative.

In *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870, the Second Circuit Court of Appeals struck the disestablishment provision from the order, saying:

> "The section concludes, however, with the words: 'and completely disestablish those associations as such representatives.' This apparently was taken from the order of the district court in *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; we cannot see that it adds anything to what precedes, and it certainly did not receive the approval of the Supreme Court; the order was indeed affirmed, but this language was not in question. It appears to us not only redundant, but to carry a charge of disapproval which the act does not warrant. It is to be remembered that the order is to be posted in all the plants, and upon the minds of laymen the addendum is quite likely to impress an unfair stigma on these unions."

National Labor Relations Board v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, and *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, are, on their facts, wholly dissimilar from the present

situation. Indeed, in the latter case this Court distinguishes, even with respect to withdrawal of recognition, between an organization structurally incapable of independent action and one which, regardless of its origin, provides an unfettered vehicle for free collective action by employees. The words of the Court were (at page 270):

> "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under § 9 (c), even though it had ordered the employer to cease unfair labor practices. But here respondents, by unfair labor practices, have succeeded in establishing a company union so organized that it is incapable of functioning as a bargaining representative of employees. With no procedure for meetings of members or for instructing employee representatives, and with no power to bring grievances before the Joint Reviewing Committee without employer consent, the Association could not without amendment of its by-laws be used as a means of the collective bargaining contemplated by § 7: and amendment could not be had without the employer's approval."

Rare Metal Workers of America, Local No. 1, is fully capable of functioning and has consistently functioned without the support or consent of the employer. Not one of the characteristics condemned by this Court stigmatizes the union in this case. The evidence shows that the organization was formed only after a secret vote of the workers and then was voluntarily selected by a majority without the slightest coercion or influence of the Respondent. The workers alone have directed its affairs. Neither the Board's finding nor its order have substantial support in the record.

V.

The discriminatory refusal of subpoenas denied to Respondent the fair hearing required by the Fifth Amendment.

The record contradicts the statement in the Board's opinion that "full opportunity to be heard, to examine and to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties." Not a single subpoena requested by the Respondent was granted either before or during the eighteen-day hearing. Not a single subpoena desired by the Board's attorney was refused. He was provided with an unlimited supply of subpoenas signed in blank (R. 1554-5). Immediately after the service of the Complaint, Respondent filed with the Board a formal application for subpoenas, specifying their purpose and complying with the rules (R. 83). A ruling on the application was delayed by the Board until the middle of the hearing, when it ordered a blanket denial of all subpoenas applied for. At least eight times during the long hearing, Respondent renewed, but in vain, its request for subpoenas (R. 121-2; 227-9; 293-5; 309; 1043-4; 1334-7; 1359-60; 1542-3). The denial to Respondent of an opportunity to compel the attendance of witnesses and the production of evidence manifested an extreme partisanship and discrimination, as well as an arbitrary abuse of discretion.

Of basic importance to the Board's case was the number of *bona fide* members Lodge 66 had on February 17 and the appropriate bargaining unit. Upon both of these subjects written records were available but were

never introduced by the Board.[40] But witnesses were permitted to testify from day to day wholly from memory (R. 181, 186, 221-3, 1375-7). Admitted in evidence as proof of date of membership was an exhibit privately prepared by a witness out of the hearing, from the very dues records for which subpoenas were refused (R. 1374-7, 1392-3). Protests against such secondary evidence and unwarranted hearsay were overruled by the Trial Examiner (R. 227-9). Indeed, the Trial Examiner went so far as to discourage the voluntary production of the original writings (R. 235-6).

As the oral testimony came in, counsel for the Respondent pointed out to the Trial Examiner:

> "It is impossible for counsel to question this witness and to check him as to the accuracy of his statements, and [that] the failure of the Board to issue the subpoena and of the Lodge to produce those records is highly prejudicial • • •" (Rec. 294).

The response and ruling of the Trial Examiner was:

> "These documents could be lying there on the table now, and you would have no right to look at them unless Mr. Walsh [the Board's attorney] was willing to

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[40] The Board finally offered in evidence unidentified application cards (R. 309-11, 1063) which admittedly did not constitute the official membership records of Lodge 66 (R. 1384-5, 1063, 1861).

The suggestion in the Board's brief that Respondent stipulated to the number of members on February 17 is erroneous (Bd. Br. p. 34). Respondent only admitted that the names—not the signatures appearing on most of the application cards, coincided with those on the payroll (R. 311). See also Board's brief, page 89.

> let you look at them because you cannot call witnesses or introduce documents until it is your time to put in your case. • • • If you did have and examined him with reference to them, it would be beyond the scope of the direct examination • • • The witness on direct examination has not introduced the exhibits. Manifestly counsel on cross-examination cannot examine on exhibits until they become part of the testimony" (R. 295).

Respondent completed its case and still no subpoenas were forthcoming. The Board called thirteen witnesses on rebuttal (R. 1361-1514). The Respondent called two witnesses on surrebuttal and then rested conditionally (R. 1515-1543). Whereupon, the Board rejoined with an additional witness (R. 1543). One and one-half hours after the Trial Examiner declared the hearing "closed", the session was reconvened on the Trial Examiner's motion. Announcement was made that the Board had issued a subpoena for membership books, but had excluded records relating to the *bona fide* character of the membership and the eligibility rules relied upon in determining the appropriate unit (R. 1555). The subpoena so grudgingly granted came from the attorney for the Board who filled in one of the signed blanks he had carried throughout the trial (R. 1554). If the Respondent was entitled to subpoenas —and the Board finally thought so—it should have had them with sufficient scope and in apt time for proper cross-examination. The limited subpoenas granted after the long trial had been so completely terminated were of no value and were properly rejected.

A motion to adduce additional testimony could not provide an adequate remedy. Unlike *Consolidated Edison Company* v. *National Labor Relations Board*, Nos. 19 and 25, decided Dec. 5, 1938, we are not concerned merely with

a refusal to receive evidence. This Respondent was denied the opportunity to break down, on cross-examination, the secondary evidence which the Board was introducing. Witness after witness testified orally on matters contained in the very documents for which subpoenas were denied and which were essential for adequate cross-examination. The prejudice resulting could not be cured by a mere acceptance of the records in evidence after the termination of the trial. There would be no explanation of their conflict with the oral testimony. By themselves the records were merely additional evidence; on cross-examination they could vitiate the oral testimony and likewise impeach the general credibility of the witnesses. This was particularly damaging since the weight of the evidence may not be judicially reviewed. When to the arbitrary denial is added the discrimination in favor of the prosecution, the conduct of the hearing does violence to every attribute of fair play and "to that sense of fairness which is almost instinctive." *John Bene & Sons, Inc.* v. *Federal Trade Commission*, 299 Fed. 468, 471 (C. C. A. 2d).

We cannot now speculate on what the records would have disclosed or how effective they would have been in impeaching the secondary evidence produced by the Board. It is entirely possible that the credibility of the several witnesses would have been so shaken as to warrant a disregard of their testimony on other issues. Nor can we conceive of a fair hearing in which the accused is denied an opportunity to cross-examine and to produce evidence simply because the prosecution has supplied what it deems sufficient on the subject (*Cf.* Bd. Br. 91).

The Board has been vested with the dual powers of prosecutor and judge. Simultaneous performance of these two functions carries with it the moral and social responsibility of scrupulous observance of those principles

universally applied to the concept of fair hearing.[41] This Court has vigilantly guarded against the invasion of the due process principle by administrative bodies. *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 24. In defining a "full hearing" before an administrative body, this Court, in *Oregon Railroad and Navigation Company* v. *Fairchild, et al.*, 224 U. S. 510, 525, noted the following outstanding features:

> "* * * The defendant was given the benefit of compulsory process to secure and present evidence in its behalf. There was a provision to require the attendance of witnesses, the production of documents and for the taking of testimony by deposition. It also had the right to cross-examine witnesses produced on the part of the Commission and the privilege of offering evidence on every matter material to the investigation."

Directly applicable is the rule applied in *Morgan* v. *United States*, 304 U. S. 1, 14, 22:

> "The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of

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[41] The Board's whole attitude on subpoenas for the Respondent was one of "expediency" rather than "fair play" as disclosed in a letter from the Trial Examiner to the Secretary of the Board, reading in part:

> "Generally speaking, the issuance of these subpoenas would certainly do no harm to any party concerned and would simply involve the taking of some additional testimony. I suspect that if the subpoenas are not granted, the Respondent will continually raise a great fuss about them as they have already done throughout the hearing. For this reason it may be expedient to issue the subpoenas." (R. 1566.)

their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Conclusion.

The decision of the Circuit Court of Appeals conforms strictly both to the statute and the decisions of this Court. It should be affirmed.

Respectfully submitted,

BENJAMIN V. BECKER,
MAX SWIREN,
DON M. PEEBLES,
BEN W. HEINEMAN,
SIDNEY H. BLOCK,
Counsel for Fansteel Metallurgical Corporation, Respondent.

APPENDIX.

Analysis and Classification of Persons Ordered Reinstated.

1. The men named below participated in the seizure and retention of the plant from February 17 to February 26, 1937.

   A. The following actually occupied the plant and were discharged for its retention (R. 1783-4, 1738-61, 1800):

- * Joseph Aigner
- * Andrew M. Anderson
- † Steve Ark
- Nick Benkovich
- † Roy Brown
- *†Edward Brunke
- *†Al. Bunton
- *†Jerome Camernik, Jr.
- † Gus Canelakes
- * Ted Christianson
- † Joseph Chudy
- *†Lester Crump
- John Cudith, Jr.
- * Leo P. Daluga
- *†Vincent Dietmeyer
- *†Clarence Dreyer
- *†Harold Dreyer
- *†Raymond E. DuBois
- † Herman Latz
- * Eric Lindberg
- Steve Luczo
- * Elmer Luke
- Nate Mogel
- * Frank Moxey
- † Frank Musech
- † Antone Nagode
- *†David Nostell
- * Theodore Ohlson
- † Elsworth Peters
- * Joseph Petraitis
- * John Praski
- † Merrit Pratt
- † Robert Pratt
- † Joseph Richveis
- † Andrew Rode
- † Alvar Rommppaine

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*These persons formerly occupied positions which have been abolished (R. 1829, 1831).

†These persons were convicted of contempt and sentenced to jail (R. 1738-1761).

* Charles E. Fulkerson, Sr.	† Arvo Rommppaine
† Angelo Galbavy	Ed. Ruck
* Phil Graimer	* Frank Scheuer
*†Stanley Grum	* Edward Schuman
* Eugene D. Hendee	† Peter Skarbalus
Fred Hensley	† Luther Small
* Victor Hertel	George W. Smith
*†Art Holm, Jr.	*†Carl A. Swanson
John W. Jackoway	*†Charles Warner
* Oscar Johnson	Victor Weatherhead
† George Kallio	* Paul Wells
† Tony Kancilja	Allen White
† Edward Kaucic	*†Fred Yaeger
† John Kondrath	† Frank Zelenick
† Frank Latz	

*These persons formerly occupied positions which have been abolished (R. 1829, 1831).

†These persons were convicted of contempt and sentenced to jail (R. 1738-1761).

B. It was stipulated that the following persons, with full knowledge of the Circuit Court injunction, actively aided and abetted the forcible retention of the buildings, contrary to the injunction (R. 1784-5):

W. D. Crump	*William D. Magness
*Thomas E. Fagan	Paul Makovec
Charles E. Fulkerson, Jr.	George Mondro
Frank Furlan	Bartol Puntarich
John Grom	*Harry Raynor
Otto Latz	John Starovich
Joe Lima	Mike Zelenick

*These persons formerly occupied positions which have been abolished (R. 1829, 1831).

2. The Respondent objected to the reinstatement of the following upon the ground that they were inefficient; no showing of any union activity by any of them was made:

Joan Bissonnette (R. 1270, 1277, 1281, 1285)
Frances Fellens (R. 1261, 1263)
Evelyn Graimer (R. 1261-2)
Fern Gartley (R. 1270, 1274-5, 1281)
*Joseph Hoff (R. 1298-9, 1897)
*Vivienne Johnson (R. 1269-70, 1273-4, 1280)
*Marguerite Seifert (R. 1269, 1276, 1280)

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*These persons formerly occupied positions which have been abolished (R. 1291, 1298-9).

3. The following refused Respondent's affirmative request to return to work without conditions; their places were accordingly filled by others:

Tillie Mesec (R. 1283)

Isabelle Recktenwald (R. 1283)

4. The following did not cease work in connection with the sit-down strike or labor dispute:

Virginia Butterfield

(The Board offered no evidence as to her; a subpoena for her attendance was refused the Respondent. The Trial Examiner recommended that the Complaint be dismissed as to her and no exceptions were filed.) (R. 1905, 1897).

Art Holm, Sr.

(He was a foreman, was not a member of Lodge 66 and did not go on strike (R. 467, 468, 470). He was discharged more than a week subsequent to

the sit-down strike for insubordination and inefficiency, both of which are amply established in the record and not denied by the Board (R. 1217-25, 836-7, 1843-9). His duties are no longer performed by any employee (R. 1217).

Bessie Luczo

(She did not participate in the strike in any way and did not even join the union until after the plant reopened.) (R. 785, 788-90).

Jasper Leskovec

(He was laid off in November, 1936 and was discharged more than a month before the sit-down strike. The Trial Examiner found that the discharge was for proper cause unconnected with union membership or activity and recommended that the Complaint be dismissed as to him; no exceptions were filed.) (R. 1225, 1850).

Jack Taylor

(He was a part time temporary employee (R. 1225-6). He did not join the union until a month after the strike (R. 852). The Trial Examiner found that his discharge was for proper cause unconnected with union membership or activity (R. 1897) and recommended that the Complaint be dismissed as to him; no exceptions were filed (R. 1905).

Note: This miscellaneous group is nowhere considered in the Board's decision or findings. Its order directs reinstatement of "employees who went on strike on February 17, 1937." Whether and to what extent this miscellaneous group is included and the findings of the Trial Examiner not excepted to are overruled, is not indicated in the order or the Board's brief.

P. 8.

SUPREME COURT OF THE UNITED STATES.

No. 436.—October Term, 1938.

National Labor Relations Board, Petitioner, *vs.* Fansteel Metallurgical Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 27, 1939.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Circuit Court of Appeals set aside an order of the National Labor Relations Board requiring respondent to desist from labor practices found to be in violation of the National Labor Relations Act and to offer reinstatement to certain discharged employees with back pay. While the other portions of the Board's order are under review, the principal question presented relates to the authority of the Board to require respondent to reinstate employees who were discharged because of their unlawful conduct in seizing respondent's property in what is called a "sit-down strike".

Respondent, Fansteel Metallurgical Corporation, is engaged at North Chicago, Illinois, in the manufacture and sale of products made from rare metals. No question is raised as to the intimate relation of its operations to interstate commerce or the effect upon that commerce of the unfair labor practices with which the corporation is charged. The findings of the Board show that in the summer of 1936 a group of employees organized Lodge 66 under the auspices of a committee of the Amalgamated Association of Iron, Steel and Tin Workers of North America; that respondent employed a "labor spy" to engage in espionage within the Union and his employment was continued until about December 1, 1936; that on September 10, 1936, respondent's superintendent was requested to meet with a committee of the union and the superintendent required that the committee should consist only of employees of five years' standing; that a committee, so constituted, presented a contract relating to working conditions; that the superintendent objected to "closed-shop and check-off provisions" and announced that it was respondent's policy to refuse recognition to

"outside" unions; that on September 21, 1936, the superintendent refused to confer with the committee in which an "outside" organizer had been included; that meanwhile, and later, respondent's representatives sought to have a "company union" set up but the attempt proved abortive; that from November, 1936, to January, 1937, the superintendent required the president of the Union to work in a room adjoining the superintendent's office with the purpose of keeping him away from the other workers; that while in September, 1936, the Union did not have a majority of the production and maintenance employees, an appropriate unit for collective bargaining, by February 17, 1937, 155 of respondent's 229 employees in that unit had joined the Union and had designated it as their collective bargaining representative; that on that date, a committee of the Union met twice with the superintendent who refused to bargain with the Union as to rates of pay, hours and conditions of employment, the refusal being upon the ground that respondent would not deal with an "outside" union.

Shortly after the second meeting in the afternoon of February 17th the Union committee decided upon a "sit-down strike" by taking over and holding two of respondent's "key" buildings. There were thereupon occupied by about 95 employees. Work stopped and the remainder of the plant also ceased operations. Employees who did not desire to participate were permitted to leave, and a number of Union members who were on the night shift and did not arrive for work until after the seizure did not join their fellow members inside the buildings. At about six o'clock in the evening the superintendent, accompanied by police officials and respondent's counsel, went to each of the buildings and demanded that the men leave. They refused and respondent's counsel "thereupon announced in loud tones that all the men in the plant were discharged for the seizure and retention of the buildings". The men continued to occupy the buildings until February 26, 1937. Their fellow members brought them food, blankets, stoves, cigarettes and other supplies.

On February 18th, respondent obtained from the state court an injunction order requiring the men to surrender the premises. The men refused to obey the order and a writ of attachment for contempt was served on February 19th. Upon the men's refusal to submit, a pitched battle ensued and the men successfully resisted the attempt by the sheriff to evict and arrest them. Efforts at mediation on the part of the United States Department of Labor and

the Governor of Illinois proved unavailing. On February 26th the sheriff with an increased force of deputies made a further attempt and this time, after another battle, the men were ousted and placed under arrest. Most of them were eventually fined and given jail sentences for violating the injunction.

Respondent on regaining possession undertook to resume operations and production gradually began. By March 12th the restaffing was approximately complete. A large number of the strikers, including many who had participated in the occupation of the buildings, were individually solicited to return to work with back pay but without recognition of the Union. Some accepted the offer and were reinstated; others refused to return unless there were union recognition and mass reinstatement and were still out at the time of the hearing before the Board. New men were hired to fill the positions of those remaining on strike.

Meanwhile the Union was not inactive. On March 3d and 5th there were requests, which respondent refused, for meetings to consider the recognition of the Union for collective bargaining. There was no collective request for reinstatement of all the strikers. The position of practically all the strikers who did not go back, and who were named in the complaint filed with the Board, was "that they were determined to stay out until the Union reached a settlement with the respondent".

Early in April a labor organization known as Rare Metal Workers of America, Local No. 1, was organized among respondent's employees. There was a meeting in one of respondent's buildings on April 15th, which was attended by about 200 employees and the balloting resulted in a vote of 185 to 15 in favor of the formation of an "independent" organization. Another meeting was held soon after for the election of officers. Respondent accorded these efforts various forms of support. The Board concluded that the Rare Metal Workers of America, Local No. 1, was the result of the respondent's "anti-union campaign" and that respondent had dominated and interfered with its formation and administration.

Upon the basis of these findings and its conclusions of law, the Board made its order directing respondent to desist from interfering with its employees in the exercise ot their right to self-organization and to bargain collectively through representatives of their own chosing as guaranteed in Section 7 of the Act; from dominating or interfering with the formation or administration of the Rare Metal Workers of America, Local No. 1, or any other labor organi-

zation of its employees or contributing support thereto; and from refusing to bargain collectively with the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 66, as the exclusive representative of the employees described. The Board also ordered the following affirmative action which it was found would "effectuate the policies" of the Act;—that is, upon request, to bargain collectively with the Amalgamated Association as stated above; to offer, upon application, to the employees who went on strike on February 17, 1937, and thereafter, "immediate and full reinstatement to their former positions", with back pay, dismissing, if necessary, all persons hired since that date; to withdraw all recognition from Rare Metal Workers of America, Local No. 1, as a representative of the employees for the purpose of dealing with respondent as to labor questions and to "completely disestablish" that organization as such representative; and to post notices of compliance. 5 N. L. R. B. 930.

The Board found that respondent had not engaged in unfair labor practices by "discrimination in regard to hire or tenure of employment" in order to "encourage or discourage membership in any labor organization", and accordingly the complaint under Section 8(3) of the Act was dismissed. *Id.*

On respondent's petition, the Circuit Court of Appeals set aside the Board's order (98 F. (2d) 375) and this Court granted certiorari. November 21, 1938.

First.—The unfair labor practices. The Board concluded that by "the anti-union statements and actions" of the superintendent on September 10, 1936, and September 21, 1936, by "the campaign to introduce into the plant a company union", by "the isolation of the union president from contact with his fellow employees", and by the employment and use of a "labor spy", respondent had interfered with its employees, and restrained and coerced them, in the exercise of their right to self-organization guaranteed in Section 7 of the Act and thus had engaged in an unfair labor practice under Section 8(1) of the Act.

Owing to the fact that in September, 1936, the Union did not have a majority of the employees in the appropriate unit, the Board held that it was precluded from finding unfair labor practices in refusing to bargain collectively at that time, but the Board found that there was such a refusal on February 17, 1937, when the Union did have a majority of the employees in the appropriate unit, and that this constituted a violation of Section 8(5).

These conclusions are suported by tne findings of the Board and the latter in this relation have substantial support in the evidence.

Second.—The discharge of the employees for illegal conduct in seizing and holding respondent's buildings. The Board does not now contend that there was not a real discharge on February 17th when the men refused to surrender possession. The discharge was clearly proved.

Nor is there any basis for dispute as to the cause of the discharge. Representatives of respondent demanded that the men leave and on their refusal announced that they were discharged "for the seizure and retention of the buildings". The fact that it was a general announcement applicable to all the men in the plant who thus refused to leave does not detract from the effect of the discharge either in fact or in law.

Nor is it questioned that the seizure and retention of respondent's property were unlawful. It was a high-handed proceeding without shadow of legal right. It became the subject of denunciation by the state court under the state law, resulting in fines and jail sentences for defiance of the court's order to vacate and in a final decree for respondent as the complainant in the injunction suit.

This conduct on the part of the employees manifestly gave good cause for their discharge unless the National Labor Relations Act abrogates the right of the employer to refuse to retain in his employ those who illegally take and hold possession of his property.

Third.—The authority of the Board to require the reinstatement of the employees thus discharged. The contentions of the Board in substance are these. (1) That the unfair labor practices of respondent led to the strike and thus furnished ground for requiring the reinstatement of the strikers; (2) That under the terms of the Act employees who go on strike because of an unfair labor practice retain their status as employees and are to be considered as such despite discharge for illegal conduct; (3) That the Board was entitled to order reinstatement or reemployment in order to "effectuate the policies" of the Act.

(1) For the unfair labor practices of respondent the Act provided a remedy. Interference in the summer and fall of 1936 with the right of self- rganization could at once have been the subject of complaint to the Board. The same remedy was available to the employees when collective bargaining was refused on February 17, 1937. But reprehensible as was that conduct of the respondent,

there is no ground for saying that it made respondent an outlaw or deprived it of its legal rights to the possession and protection of its property. The employees had the right to strike but they had no license to commit acts of violence or to seize their employer's plant. We may put on one side the contested questions as to the circumstances and extent of injury to the plant and its contents in the efforts of the men to resist eviction. The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society.

As respondent's unfair labor practices afforded no excuse for the seizure and holding of its buildings, respondent had its normal rights of redress. Those rights, in their most obvious scope, included the right to discharge the wrongdoers from its employ. To say that respondent could resort to the state court to recover damages or to procure punishment, but was powerless to discharge those responsible for the unlawful seizure would be to create an anomalous distinction for which there is no warrant unless it can be found in the terms of the National Labor Relations Act. We turn to the provisions which the Board invokes.

(2) In construing the Act in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 45, 46, we said that it "does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them"; that the employer "may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion". See, also, *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132. Compare *Texas & New Orleans R. R. Co.* v. *Brotherhood*, 281 U. S. 548, 571; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 559.

It is apparent under that construction of the Act that had there been no strike, and employees had been guilty of unlawful conduct in seizing or committing depredations upon the property of their employer, that conduct would have been good reason for discharge, as discharge on that ground would not be for the purpose of intimidating or coercing employees with respect to their right of self-organization or representation, or because of any lawful union activity, but would rest upon an independent and adequate basis.

But the Board, in exercising its authority under Section 10(c) to reinstate "*employees*", insists that here the status of the employees was continued, despite discharge for unlawful conduct, by virtue of the definition of the term "*employee*" in Section 2(3). By that definition the term includes

"any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, ...".

We think that the argument misconstrues the statute. We are unable to conclude that Congress intended to compel employers to retain persons in their employ regardless of their unlawful conduct,—to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property, which they would not have enjoyed had they remained at work. Apart from the question of the constitutional validity of an enactment of that sort, it is enough to say that such a legislative intention should be found in some definite and unmistakable expression. We find no such expression in the cited provision.

We think that the true purpose of Congress is reasonably clear. Congress was intent upon the protection of the right of employees to self-organization and to the selection of representatives of their own choosing for collective bargaining without restraint or coercion. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation, supra*, p. 33. To assure that protection, the employer is not permitted to discharge his employees because of union activity or agitation for collective bargaining. *Associated Press* v. *National Labor Relations Board, supra.* The conduct thus protected is lawful conduct. Congress also recognized the right to strike,—that the employees could lawfully cease work at their own volition because of the failure of the employer to meet their demands. Sec-

tion 13 provides that nothing in the Act "shall be construed so as to interfere with or impede or diminish in any way the right to strike". But this recognition of "the right to strike" plainly contemplates a lawful strike,—the exercise of the unquestioned right to quit work. As we said in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333, 347, "if men strike in connection with a current labor dispute their action is not to be construed as a renunciation of the employment relation and they remain employees for the remedial purposes specified in the Act". There is thus abundant opportunity for the operation of Section 2(3) without construing it as countenancing lawlessness or as intended to support employees in acts of violence against the employer's property by making it impossible for the employer to terminate the relation upon that independent ground.

Here the strike was illegal in its inception and prosecution. As the Board found, it was initiated by the decision of the Union committee "to take over and hold two of the respondent's 'key' buildings". It was pursuant to that decision that the men occupied the buildings and the work stopped. This was not the exercise of "the right to strike" to which the Act referred. It was not a mere quitting of work and statement of grievances in the exercise of pressure recognized as lawful. It was an illegal seizure of the buildings in order to prevent their use by the employer in a lawful manner and thus by acts of force and violence to compel the employer to submit. When the employees resorted to that sort of compulsion they took a position outside the protection of the statute and accepted the risk of the termination of their employment upon grounds aside from the exercise of the legal rights which the statute was designed to conserve.

(3) The Board contends that its order is valid under the terms of the Act "regardless of whether the men remained employees". The Board bases its contention on the general authority, conferred by Section 10(c), to require the employer to take such affirmative action as will "effectuate the policies" of the Act. Such action, it is argued, may embrace not only reinstatement of those whose status as employees has been continued by virtue of Section 2(3), but also a requirement of the "reemployment" of those who have ceased to be employed.

The authority to require affirmative action to "effectuate the policies" of the Act is broad but it is not unlimited. It has the essential limitations which inhere in the very policies of the Act which

the Board invokes. Thus in *Consolidated Edison Company* v. *National Labor Relations Board* (decided December 5, 1938), we held that the authority to order affirmative action did not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board is of the opinion that the policies of the Act may be effectuated by such an order. We held that the power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act.

We repeat that the fundamental policy of the Act is to safeguard the rights of self-organization and collective bargaining, and thus by the promotion of industrial peace to remove obstructions to the free flow of commerce as defined in the Act. There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the Act is to promote peaceful settlements of disputes by providing legal remedies for the invasion of the employees' rights. Elections may be ordered to decide what representatives are desired by the majority of employees in appropriate units as determined by the Board. To secure the prevention of unfair labor practices by employers, complaints may be filed and heard and orders made. The affirmative action that is authorized is to make these remedies effective in the redress of the employees' rights, to assure them self-organization and freedom in representation, not to license them to commit tortious acts or to protect them from the appropriate consequences of unlawful conduct. We are of the opinion that to provide for the reinstatement or reemployment of employees guilty of the acts which the Board finds to have been committed in this instance would not only not effectuate any policy of the Act but would directly tend to make abortive its plan for peaceable procedure.

What we have said also meets the point that the question whether reinstatement or reemployment would effectuate the policies of the Act is committed to the decision of the Board in the exercise of its discretion subject only to the limitation that its action may not be "arbitrary, unreasonable or capricious". The Board recognizes that in "many situations" reinstatement or reemployment after

discharge for illegal acts would not be proper, but the Board insists that it was proper in this instance. For the reasons we have given we disagree with that view. We think that a clearer case could hardly be presented and that, whatever discretion may be deemed to be committed to the Board, its limits were transcended by the order under review.

The Board stresses the fact that, when respondent was able to obtain possession of its buildings and to resume operations, it offered reemployment to many of the men who had participated in the strike. The contention confuses what an employer may voluntarily and legally do in the exercise of his right of selection and what the Board is entitled to compel. In announcing the reopening respondent stated its belief that a large number of men who had taken part in the seizure of the plant were compelled to do so through coercion and intimidation and that applications for reemployment from such men would receive favorable consideration. The Board challenges the statement that respondent limited its rehiring to such applicants. The Board points to evidence showing that everyone who applied for reemployment during the period of restaffing was taken back without condition except two employees who were advanced in years and were not reinstated solely for that reason, and to the testimony of the superintendent that at least thirty-seven were rehired "who had been in the sit-down".

We find it unnecessary to consider in detail the respective contentions as to respondent's offer of reemployment, for we think that its action did not alter the unlawful character of the strike or respondent's rights in that aspect. The important point is that respondent stood absolved by the conduct of those engaged in the "sit-down" from any duty to reemploy them, but respondent was nevertheless free to consider the exigencies of its business and to offer reemployment if it chose. In so doing it was simply exercising its normal right to select its employees.

Fourth.—The requirement of reinstatement of employees who aided and abetted those who seized and held the buildings. There is a group of fourteen persons in this class who were not within the buildings and hence do not appear to have been within the announcement of discharge, but who went on strike and fall within the order for reinstatement. The Board made no separate findings with respect to these particular persons and refers us to the evidence to show their relation to the transactions under review. This, however, sufficiently appears in the stipulation of facts, to

which the Board was a party, naming in paragraph 12 these fourteen persons and describing their conduct as follows:

"All of the following men were employees of the company on February 17, 1937, but did not participate in the seizure and retention of the building, but aided and abetted the men within the said buildings 3 and 5 in the retention of the said buildings by soliciting, procuring and delivering of food, bedding, cigarettes, stoves, or other supplies, or in some other manner, and thereby assisted the said men in buildings 3 and 5 to remain therein contrary to the injunctional order and writ of injunction heretofore mentioned; that all of the said men named in this paragraph had actual knowledge of the issuance of the said injunctional order and writ of injunction ordering and directing the men in buildings 3 and 5 to vacate the same, and that their activities in aiding and abetting the men in buildings 3 and 5 were done with a view to and for the purpose of assisting the said men to remain in the said buildings after the issuance of the said injunctional order and writ of injunction and with knowledge thereof. None of the men named in this paragraph were discharged by the company on February 17 , 1937, or thereafter, and none of these men were recalled to work by the company upon the resumption of plant operations shortly after February 26th, 1937:" (the names follow)

It cannot be said that independently of the Act respondent was bound to reinstate those who had thus aided and abetted the "sit-down" strikers in defying the court's order. If it be assumed that by virtue of Section 2(3) they still had the status of "employees", that provision did not automatically provide reinstatement. Whether the Board could order it must turn on the application of the provision empowering the Board to require "such affirmative action, including reinstatement of employees" as will "effectuate the policies" of the Act. We are thus returned to the question already discussed and we think that in that respect these aiders and abettors, likewise guilty of unlawful conduct, are in no better case than the "sit-down" strikers themselves. We find no ground for concluding that there is any policy of the Act which justifies the Board in ordering reinstatement in such circumstances.

Fifth.—There are nine other persons apparently embraced within the order of reinstatement as to which respondent interposes special objections. As to seven, respondent objects to the reinstatement upon the ground that they were inefficient and that no showing of union activity by any of them was made. As to two others, respondent contends that they refused its request to return to work without any conditions and that their places were accordingly filled.

With respect to these nine persons, and to a miscellaneous group of five others including three as to whom the trial examiner recommended dismissal of the complaint, the Board has not supplied specific findings upon the points in controversy to sustain its order.

We are of the opinion that the Circuit Court of Appeals did not err in setting aside the requirement of reinstatement.

Sixth.—The requirement that respondent shall bargain collectively with Lodge 66 of the Amalgamated Association as the exclusive representative of the employees in the described unit.

Respondent resumed work about March 12, 1937. The Board's order was made on March 14, 1938. In view of the change in the situation by reason of the valid discharge of the "sit-down" strikers and the filling of positions with new men, we see no basis for a conclusion that after the resumption of work Lodge 66 was the choice of a majority of respondent's employees for the purpose of collective bargaining. The Board's order properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization and to bargain collectively through respresentatives of their own choosing. But it is a different matter to require respondent to treat Lodge 66 in the altered circumstances as such a representative. If it is contended that Lodge 66 is the choice of the employees, the Board has abundant authority to settle the question by requiring an election.

Seventh.—The requirement that respondent shall withdraw all recognition from Rare Metal Workers of America, Local No. 1.

While respondent presents a strong protest, insisting that Local No. 1 of the Rare Metal Workers was the free choice of the employees after work was resumed, we cannot say that there is not substantial evidence that the formation of this organization was brought about through promotion efforts of respondent contrary to the provision of Section 8(2), and we think that the order of the Board in this respect should be sustained. Whether Rare Metal Workers of America, Local No. 1, or any other organization, is the choice of the majority of the employees in the proper unit can be determined by proceedings open to the Board.

The provisions of the Board's order contained in Paragraph 1, subdivisions (a) and (b), in Paragraph 2, subdivision (d), and in Paragraph 2, subdivisions (e) and (f) so far as these refer to the

first-mentioned provisions, and the final Paragraph of the order dismissing the charge under Section 8(3) of the Act, are sustained. The other provisions of the order are set aside.

The judgment of the Circuit Court of Appeals is modified accordingly and as modified is affirmed.

It is so ordered.

Mr. Justice FRANKFURTER took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 436.—October Term, 1938.

National Labor Relations Board, Petitioner, vs. Fansteel Metallurgical Corporation. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 27, 1939.]

Mr. Justice Stone, concurring in part.

I concur in so much of the Court's decision as holds that the Board was without statutory authority to order reinstatement of those employees who were discharged on February 17, 1937. But I rest this conclusion solely on the construction of § 2(3) and § 10(c) of the National Labor Relations Act. By § 10(c) the Board is given authority to reinstate in their employment only those who are "employees". Before the Board made its order, respondent's employees, by reason of their lawful discharge for cause, had lost their status as such, which would otherwise have been preserved to them under § 2(3).

The National Labor Relations Act, as its purpose and scope are disclosed by its preamble and operative provisions and explained by the reports of the Congressional committees recommending its enactment, Report No. 573, Senate Committee on Education and Labor, 74th Cong., 1st Sess.; Report No. 1147, House Committee on Labor, 74th Cong., 1st Sess., is aimed at securing the peaceable settlement of labor disputes by the prevention of unfair labor practices of the employer and by requiring him to bargain collectively with his employees. Since one means adopted by the Act to secure this end is the reinstatement, by the discretionary action of the National Labor Relations Board, of employees when unfair labor practices have caused them to cease work, it was necessary to provide that they should not lose their status as employees by reason of that fact. This was accomplished by § 2(3), which provides:

"The term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. . . ."

Having in mind the purposes of the Act and the end sought by the enactment of this section, I think its fair meaning is that attributed to it by the Senate Committee Report, *supra*, pp. 6-7, which declared:

"The bill thus observes the principle that men do not lose their right to be considered as employees for the purposes of this bill merely by collectively refraining from work during the course of a labor controversy. . . . And to hold that a worker who because of an unfair labor practice has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby."

But it does not follow because the section preserves this right to employees where they have ceased work by reason of a labor dispute or unfair labor practice, that its language is to be read as depriving the employer of his right, which the statute does not purport to withdraw, to terminate the employer-employee relationship for reasons dissociated with the stoppage of work because of unfair labor practices. The language which saves the employee status for those who have ceased work because of unfair labor practices does not embrace also those who have lost their status for a wholly different reason—their discharge for unlawful practices which the Act does not countenance.

There is nothing in the Act, read as a whole, to indicate such a purpose, and there is no language in § 2(3) directed to such an end. I cannot attribute to Congress in the adoption of § 2(3), explained as it was in the Senate Committee Report, a purpose to cut off the right of an employer to discharge employees who have destroyed his factory and to refuse to reemploy them, if that is the real reason for his action. If a plainer indication of such a purpose had been given by the language of § 2(3), I should have thought it of sufficiently dubious constitutionality to require us to construe its language otherwise, if that could reasonably be done, leaving it to Congress to say so, in unmistakable language, if it really meant to impose that duty on the employer.

As to the fourteen employees who aided and abetted the sit-down strike, but who were not discharged, I think they retained their status under § 2(3), and that the Board had power to reinstate them. Whether that power should be exercised was a matter committed to the Board's discretion, not ours.

In other respects I concur with the decision of the Court.

SUPREME COURT OF THE UNITED STATES.

No. 436.—October Term, 1938.

National Labor Relations Board, Petitioner, vs. Fansteel Metallurgical Corporation. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 27, 1939.]

Mr. Justice Reed, dissenting in part.

This Court agrees with the conclusion of the Labor Board that the respondent was guilty of unfair labor practices, prior to the strike, in campaigning for a company union, isolating the union president, making, through its superintendent, anti-union statements and employing a labor spy. It also accepts the Board's conclusion that there was further pre-strike violation by respondent of the Labor Relations Act by refusal to bargain collectively. None questions the power of the Board to reinstate striking employees as a means of redress for unfair labor practices. The issue while important is narrow. Can an employee, on strike or let out by an unfair labor practice, be discharged, finally, by an employer so as to be ineligible for reinstatement under the act?

The issue so stated glows feebly apart from the fire of controversy. But it may permit a more objective appraisal than to examine it when illustrated by conduct on the part of the employees which is thought to put "a premium on resort to force" and to subvert "the principles of law and order which lie at the foundations of society." None on either side of the disputed issue need be suspected of "countenancing lawlessness," or of encouraging employees to resort to "violence in defiance of the law of the land." Disapproval of a sit-down does not logically compel the acceptance of the theory that an employer has the power to bar his striking employee from the protection of the Labor Act.

The Labor Act was enacted in an effort to protect interstate commerce from the interruptions of labor disputes. This object was sought through prohibition of certain practices deemed unfair to

labor, and the sanctions adopted to enforce the prohibitions included reinstatement of employees. To assure that the status of strikers was not changed from employees to individuals beyond the protection of the act, the term employee was defined to include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice . . . ." § 2(3), Act of July 5, 1935. Without this assurance of the continued protection of the act, the striking employee would be quickly put beyond the pale of its protection by discharge. As now construed by the Court, the employer may discharge any striker, with or without cause, so long as the discharge is not used to interfere with self-organization or collective bargaining. Friction easily engendered by labor strife may readily give rise to conduct, from nose-thumbing to sabotage, which will give fair occasion for discharge on grounds other than those prohibited by the Labor Act.

The Congress sought by clear language to eliminate this prolific source of ill feeling by the provision just quoted which should be interpreted in accordance with its language as continuing the eligibility of a striker for reinstatement, regardless of conduct by the striker or action by the employer. The constitutional problem involved in such a conclusion is not different from the one involved in compelling an employer to reinstate an employee, discharged for union activity. There is here no protection for unlawful activity. Every punishment which compelled obedience to law still remains in the hands of the peace officers. It is only that the act of ceasing work in a current labor dispute involving unfair labor practices suspends for a period, not now necessary to determine, the right of an employer to terminate the relation. The interference with the normal exercise of the right to discharge extends only to the necessity of protecting the relationship in industrial strife.

The point is made that an employer should not be compelled to reemploy an employee guilty, perhaps, of sabotage. This depends upon circumstances. It is the function of the Board to weigh the charges and countercharges and determine the adjustment most conducive to industrial peace. Courts certainly should not interfere with the normal action of administrative bodies in such circumstances. Here both labor and management had erred grievously in their respective conduct. It cannot be said to be unreasonable to

restore both to their former status. Such restoration would apply to the sit-down strikers and those striking employees who aided and abetted them.

I am of the view that the provisions of the order of the Board ordering an offer of reinstatement to the employees discussed above should be sustained. As the remainder of the order is affected by the determination upon this issue but not wholly controlled by the conclusions, no opinion is expressed as to the other requirements of the order.

Mr. Justice BLACK concurs in this dissent.